

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

In re:

5 RESIDENTIAL CAPITAL, LLC., Case No.
et al., 12-12020 (MG)

6
7 Debtors.
8 -----x

9 VIDEOTAPED
10 DEPOSITION OF LEWIS KRUGER
11 New York, New York
12 Wednesday, October 30, 2013
13
14

15 Yellow Highlighting = JSN Designations
16 Pink Highlighting = Plaintiff's Counter-Designations
17 Orange Highlighting = Joint Designations
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24 Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
25 JOB NO. 67414

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October 30, 2013

10:00 a.m.

Videotaped deposition of LEWIS
KRUGER, held at the offices of Morrison &
Foerster LLP, 1290 Avenue of the
Americas, New York, New York, pursuant to
Notice, before Francis X. Frederick, a
Certified Shorthand Reporter, Registered
Merit Reporter and Notary Public of the
States of New York and New Jersey.

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2 A P P E A R A N C E S:

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4 MILBANK TWEED HADLEY & McCLOY
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6 Secured Noteholders

7 1850 K Street, N.W.

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9 BY: DAVID COHEN, ESQ.

10 KATHERINE RHODES JANOFISKY, ESQ.

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16 BY: CHARLES KERR, ESQ.

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20 BY: RANDALL RAINER, ESQ.

21 FLETCHER STRONG, ESQ.

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2 A P P E A R A N C E S: (Cont'd.)

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4 JONES DAY

5 Attorneys for FGIC

6 222 East 41st Street

7 New York, New York 10017

8 BY: RICK WYNNE, ESQ. (via telephone)

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10 KELLEY DRYE

11 Attorneys for UMB Bank

12 101 Park Avenue

13 New York, New York 10178

14 BY: TIMOTHY MARTIN, ESQ. (via telephone)

15
16
17
18
19 ALSO PRESENT:

20 ROBERT RINKEWICH, Videographer

1 PROCEEDINGS

2 THE VIDEOGRAPHER: This is the
3 start of tape labeled number one of the
4 videotaped deposition of Lewis Kruger in
5 the matter of In Re. Residential Capital,
6 et al. in the United State Bankruptcy
7 Court for the Southern District of New
8 York. This deposition is being held at
9 1290 Avenue of the Americas, New York,
10 New York, on October 30th, 2013 at
11 approximately 10:06 a.m.

12 My name is Robert Rinkewich from
13 TSG Reporting, Incorporated and I am the
14 legal video specialist. The court
15 reporter its Francis Frederick in
16 association with TSG Reporting.

17 Would counsel state their
18 appearances for the record.

19 MR. COHEN: This is David Cohen,
20 Milbank, Tweed, Hadley & McCloy, on
21 behalf of the Ad Hoc Group of JSN
22 Noteholders and UMB Bank as Notes Trustee
23 with my colleague, Kate Janofsky.

24 MR. KERR: Charles Kerr of
25 Morrison & Foerster on behalf of the

1 PROCEEDINGS

2 Debtors and the witness.

3 MR. LAWRENCE: Alex Lawrence of
4 Morrison & Foerster on behalf of the
5 Debtors and the witness.

6 MR. SILVERSCHOTZ: Mark
7 Silverschotz, Reed Smith, for Wells Fargo
8 as collateral agent.

9 MR. JURGENS: Jason Jurgens from
10 Cadwalader, Wickersham & Taft, LLP, on
11 behalf of MBIA.

12 MR. OPOLSKY: Jeremy Opolsky,
13 Cleary, Gottlieb, Steen & Hamilton, for
14 Wilmington Trust.

15 MR. KOTWICK: Mark Kotwick, Seward
16 & Kissell, on behalf of US Bank as
17 Trustee.

18 MR. LIPPS: Jeff Lipps, Carpenter,
19 Lipps & Leland on behalf of the Debtors.

20 MS. GOLDSTEIN: Rachel Goldstein
21 on behalf of Kirkland & Ellis on behalf
22 of Ally Financial.

23 MR. ZIEGLER: David Ziegler,
24 Morrison & Foerster, on behalf of the
25 Debtors and the witness.

1 L. KRUGER

2 MR. MANNAL: Doug Mannal, Kramer
3 Levin, on behalf of the Committee.

4 THE VIDEOGRAPHER: Do we have
5 anybody on the phone?

6 MR. KERR: Yeah. The people on
7 the phone, if you could just introduce
8 yourself for the court reporter.

9 MR. WYNNE: Rick Wynne from Jones
10 Day on behalf of FGIC.

11 MR. MARTIN: Tim Martin from
12 Kelley Drye on behalf of the UMB Bank.

13 * * *

14 L E W I S K R U G E R, called as a
15 witness, having been duly sworn by a
16 Notary Public, was examined and
17 testified as follows:

18 EXAMINATION BY

19 MR. COHEN:

20 Q. Good morning, Mr. Kruger.

21 A. Good morning.

22 Q. I understand you've been deposed
23 before.

24 A. I have been.

25 Q. How many times?

1 L. KRUGER

2 A. In this case twice.

3 Q. How many in your lifetime?

4 A. Probably half a dozen.

5 Q. All right. We'll go over the
6 ground rules very quickly, which I'm sure will
7 be very familiar to you. You understand that
8 you're under oath?

9 A. Yes.

10 Q. That your testimony here is just
11 as though you were giving it in court under
12 penalty of perjury?

13 A. Yes.

14 Q. To keep a clean record here I'd
15 like to make sure that we speak one at a time
16 so I'd ask if you'd let me finish my question
17 before you begin your answer and I'll do my
18 best to extend you the same courtesy and let
19 you finish your answer before I begin my next
20 question.

21 A. Thank you.

22 Q. If any of my questions are unclear
23 to you or you don't understand my question,
24 let me know, I'll do my best to clear up any
25 ambiguity. All right?

1 L. KRUGER

2 A. Yes.

3 Q. Okay. All of your answers need to
4 be oral. A nod is not going to be recorded on
5 the written transcript, okay?

6 A. Yes.

7 Q. If you need to consult with your
8 attorney at any time let me know and we can
9 take that up.

10 A. Okay.

11 Q. If you'd like to take a break at
12 any time, let me know and I'll do my best to
13 accommodate you, all right?

14 A. Thank you very much.

15 Q. What did you do to prepare for
16 this deposition?

17 MR. KERR: Not to interrupt, but
18 we just had two other folks show up so if
19 we could get them on the record.

20 MR. COHEN: That's okay. This is
21 an appropriate time to have people enter
22 their appearances.

23 MR. RAINER: Randall Rainer,
24 Wollmuth, Maher & Deutsch, for Syncora
25 Guarantee. This is my colleague,

1 L. KRUGER

2 Fletcher Strong.

3 MR. KERR: Sorry. Sorry.

4 MR. COHEN: No problem.

5 BY MR. COHEN:

6 Q. So, Mr. Kruger, what did you do to
7 prepare for to deposition?

8 A. Met with my counsel. Reviewed
9 documents.

10 Q. When did you meet with your
11 counsel?

12 A. Over the last few days.

13 Q. How many days?

14 A. Probably two or three days. Parts
15 of those days.

16 Q. So how many hours in total would
17 you say that you met with your counsel to
18 prepare for this deposition?

19 A. Ten, 12 hours.

20 Q. Could you give me an estimate of
21 the volume of documents you looked at in
22 preparation for the deposition.

23 A. I'm not sure how I can do that.
24 Hundreds of pages of documents.

25 Q. But was it 15 documents, a hundred

1 L. KRUGER

2 documents?

3 A. Oh, number of documents? I don't
4 really recall as I sit here today but my guess
5 is probably a half dozen or so.

6 Q. Do you recall what those documents
7 were?

8 A. I do recall some of them. I do
9 recall looking at the reorganization plan.
10 Disclosure statement. Primarily those two.

11 Q. Any others come to mind?

12 A. I looked at the White & Case
13 Complaint. The objection to confirmation I
14 guess is the right words.

15 That's really all that comes to
16 mind.

17 Q. When you say the objection to
18 confirmation would that be the JSN's plan
19 objection that was filed about a week ago?

20 A. Yes. That's what I had in mind.

21 Q. When you say you met with your
22 counsel are you talking about the lawyers at
23 Morrison & Foerster?

24 A. That's correct.

25 Q. Anyone else?

1 L. KRUGER

2 A. No.

3 Q. Did you meet with any of the
4 Debtors' financial advisors?

5 A. I met with them over the course of
6 this entire proceeding from time to time and
7 so I don't know that I met with them
8 specifically to prepare for this but I
9 certainly met with them and talked with them
10 regularly.

11 Q. Okay. Let me ask a more specific
12 question. In preparing for your testimony
13 today, did you schedule sessions to meet with
14 the Debtors' financial advisors?

15 A. No, I did not.

16 Q. Did you meet with anybody at the
17 company, any of the officers or management
18 team?

19 A. I've had discussions with
20 management team over the course of the months
21 that I've been involved and had some
22 discussion with them during the course of the
23 last week. It's hard to really envision
24 conversations that I had that don't have as
25 their goal either confirmation of the Chapter

1 L. KRUGER

2 11 proceeding, which I assume is part and
3 parcel of this deposition. So it's hard for
4 me to distinguish between specific general
5 depositions preparation and more generally the
6 confirmation for the proceeding.

7 Q. Fair enough.

8 Did you with respect to the
9 management team at ResCap schedule any
10 meetings for the purpose of preparing for you
11 deposition?

12 A. Specifically, no.

13 Q. All right.

14 Who is your current employer?

15 A. ResCap.

16 Q. And what is your title?

17 A. Chief Restructuring Officer.

18 Q. When did you become the Chief
19 Restructuring Officer of ResCap?

20 A. I don't remember the exact date,
21 but sometime in February of this year. And
22 when I say that they are my employer, I'm also
23 the Chief Restructuring Officer for all of the
24 Debtors in these proceedings. My appointment
25 was confirmed by the bankruptcy court I

1 L. KRUGER

2 believe on March 5th of 2013.

3 Q. How did you come to become the
4 chief restructuring officer of all of the
5 Debtors?

6 A. I was approached by people I knew
7 at Morrison & Foerster. They had asked if I
8 would be interested in taking on this role. I
9 said I might be. I was then interviewed by
10 the board of directors of the company and they
11 concluded that they'd like to have me serve as
12 chief structuring officer and I agree to do
13 so.

14 Q. At the time you we met Morrison &
15 Foerster and they approached you about
16 becoming the chief restructuring officer, what
17 did they describe to you as the scope of
18 services that you would be expected to
19 provide?

20 A. That I would be the chief
21 restructuring officer of the company,
22 participate in the mediation process that was
23 ongoing, and assist them in trying the find a
24 resolution of these contentious Chapter 11
25 proceedings.

1 L. KRUGER

2 Q. Did they give any more detail on
3 that?

4 A. I'm not sure what kind of detail
5 you mean.

6 Q. What specific tasks other than
7 participating in the mediation and trying to
8 find a way to resolve these contentious
9 proceedings?

10 A. Well, I have an engagement that
11 sets forth all of my -- things that I'm
12 expected to be doing and are doing and have
13 done. So other than referring to that, I'm
14 not sure that I could give you an offhand
15 list. That would be the most appropriate
16 place to look for the engagement.

17 Q. As you sit here right now is there
18 any part of the engagement letter that you
19 feel you did not do?

20 A. No.

21 Q. All right.

22 MR. COHEN: Let's mark as the
23 first exhibit the Notice of Debtors'
24 Motion Pursuant to Section 105(a) and
25 363(b) of the Bankruptcy Code for an

1 L. KRUGER

2 Order Authorizing the Debtors to Appoint
3 Lewis Kruger as Chief Restructuring
4 Officer.

5 (Kruger Exhibit 1, Notice of
6 Debtors' Motion Pursuant to Sections
7 105(a) and 363(b) of the Bankruptcy Code
8 for an Order Authorizing the Debtors to
9 Appoint Lewis Kruger as Chief
10 Restructuring Officer, marked for
11 identification as of this date.)

12 BY MR. COHEN:

13 Q. Mr. Kruger, the reporter has

14 handed you a document marked Kruger Exhibit 1.

15 Would you take a moment to look at this

16 document.

17 (Document review.)

18 A. Yes.

19 Q. Have you seen this document

20 before?

21 A. Yes, I have.

22 Q. When was the first time you saw

23 this document?

24 A. During the latter part of February

25 of this year. Some of it I would guess during

1 L. KRUGER

2 the latter part of February of 2013.

3 Q. All right. Would you agree with
4 me that this was the motion to formalize your
5 appointment as the CRO of the Debtors?

6 A. Yes, I would.

7 MR. KERR: Objection. Go ahead
8 you can answer.

9 A. Yes.

10 Q. Did you review this document
11 before it was filed?

12 A. Yes.

13 Q. Was there anything in this
14 document that you disagreed with that remained
15 in the document when it was filed with the
16 court?

17 A. Not that I recall sitting here
18 today.

19 Q. Okay. Would you turn to page 2 of
20 the document. And I'd like to focus you on
21 paragraph 3 under the Preliminary Statement.
22 Let me know when you're there.

23 MR. KERR: Page 2 of the exhibit
24 or page 2 of the Motion?

25 MR. COHEN: Page 2 at the bottom.

1 L. KRUGER

2 At the top you could do page 6 of 9.

3 MR. KERR: Okay.

4 Q. It's paragraph 3.

5 A. Actually, just to correct the
6 record, it's page 6 of 19.

7 Q. Sorry. I stand corrected.

8 Are you with me at paragraph 3?

9 A. Yes, I am.

10 Q. If you look towards the bottom of
11 that paragraph, the fourth line up, the Motion
12 states that, "As such, the CRO will lead the
13 Debtors in plan mediation and assist in the
14 formation of a Chapter 11 plan."

15 Do you see that statement?

16 A. Dyes.

17 Q. Do you understand that that was
18 part of the scope of your responsibilities as
19 CRO?

20 A. Yes.

21 Q. And did you do that?

22 A. Yes.

23 Q. The second task identified here is
24 that you would assist in the resolution of the
25 inter-estate claims.

1 L. KRUGER

2 Do you see that?

3 A. Yes.

4 Q. Did you understand that to be a
5 scope of your responsibility as CRO?

6 A. Yes.

7 Q. Did you do that?

8 A. Yes.

9 Q. The third item was you were to
10 work with creditors to resolve interdebtor and
11 intercreditor disputes including the
12 allocation of assets among the debtors.

13 Do you see that?

14 A. Yes.

15 Q. Did you do that?

16 A. Yes.

17 Q. All right.

18 Let's flip further back here.

19 We'll use the numbering at the top. It's page
20 13 of 19. It's the same Exhibit 1. I'd like
21 to direct your attention to Section C, Scope
22 of Services.

23 A. Yes.

24 Q. The Motion states that the Debtors
25 anticipate that the CRO will assist the

1 L. KRUGER

2 remaining members of the Debtors' management
3 team with the following responsibilities. And
4 among other things, it is participant in
5 negotiations with AFI.

6 Did you do that?

7 A. Yes.

8 Q. The next bullet says you will
9 provide advice regarding the allocation of any
10 AFI settlement.

11 Did you do that?

12 A. Yes, I did.

13 Q. What advice did you provide
14 regarding the allocation of any AFI
15 settlements?

16 MR. KERR: And, Mr. Kruger, again,
17 to the extent you're giving advice --
18 well, I just want you to be cautious to
19 not disclose privileged communications.
20 I think you can answer the question that
21 Mr. Cohen has offered, but I just want
22 you to be careful not to disclose
23 privileged communications. And I want
24 you to be cognizant of, and I know you
25 are, that there is a confidentiality

1 L. KRUGER

2 order in place regarding the mediation.

3 So I want you to also not disclose
4 anything that occurred during the
5 mediation.

6 But subject to that you're free to
7 respond to Mr. Cohen's questions.

8 A. When you asked about providing
9 advice, to whom specifically are you asking?

10 Q. I'm asking for advice that you
11 provided to the Debtors' management team
12 regarding the allocation of the AFI settlement
13 consistent with the Scope of Services in
14 Kruger Exhibit 1.

15 A. I provided that to the management
16 team.

17 Q. And what advice did you provide to
18 the management team regarding the allocation
19 of the AFI settlement?

20 A. After the conclusion of the plan
21 support agreement and the supplemental term
22 sheet, I reviewed with the management the
23 allocation of the Debtors' assets, the Ally
24 contribution.

25 Q. And what specific advice did you

1 L. KRUGER

2 provide to the Debtors' management regarding
3 the allocation of the Debtors' assets and the
4 Ally contribution?

5 A. I did that in the context of the
6 mediation process. I'm not sure how to
7 respond to that.

8 Q. One of your responsibilities was
9 to advise the Debtors on allocating the Ally
10 settlement, correct?

11 A. Yes.

12 Q. And you did so?

13 A. Yes.

14 Q. And it's your view that you can't
15 discuss that because of a mediation
16 confidentiality?

17 A. The allocation took place, as I
18 understand it for myself, in the context of
19 the mediation.

20 Q. What do you mean when you say as
21 you understand it for yourself?

22 A. In the midst of mediation we
23 discussed the allocation of the proceeds from
24 the Debtor's estates, the proceeds from the
25 Ally contribution if that's what you're

1 L. KRUGER

2 referring to. That was done as part of the
3 mediation.

4 Q. Well, as you went into the
5 mediation you must have had a view, separate
6 and apart from the mediation, as to where the
7 value from an Ally contribution would be
8 driven, correct?

9 MR. KERR: Objection to form.

10 A. No. I did not.

11 Q. So when you went into the
12 mediation you had no sense of potential claims
13 against Ally?

14 A. I knew that there were prospective
15 claims against Ally, yes.

16 Q. And did you have an understanding
17 as to what those claims were?

18 A. Yes, I did.

19 Q. How did you have an understanding
20 as too what those claims were?

21 A. Through discussions with my
22 counsel, with Creditors Committee's counsel,
23 with my financial advisors, Creditors
24 Committee's financial advisors, and by
25 conversation with virtually all of the members

1 L. KRUGER

2 of Creditors Committee with respect to how
3 they proceed the claims that the estate might
4 have against Ally.

5 Q. Okay. And when you had those
6 conversations with those constituents, again
7 separate and apart from your own counsel, so
8 negotiations with Creditors Committee and
9 their financial advisors, did they tell you
10 which Debtors they believed held claims again
11 Ally?

12 MR. KERR: Again, to the extent
13 those conversations occurred during the
14 mediation, Mr. Kruger, I think the
15 confidentiality provision of the
16 mediation apply. If there's discussions
17 that you recall occurred outside the
18 mediation, you're free to tell Mr. --

19 Q. And I believe my question is when
20 you went into a mediation room, you must have
21 had some understanding as to what the claims
22 would be. So it is not in the mediation.

23 MR. KERR: Well, no. Mr. Cohen,
24 we can go back and read your question.
25 My direction to the witness is if you had

1 L. KRUGER

2 discussions -- your question -- and I'll
3 go back and read it -- I think your
4 question was "When you had those
5 conversations with those constituents,
6 again separate and apart from your own
7 counsel, so negotiations with Creditors
8 Committee and their financial advisors,
9 did they tell you which Debtors they
10 believed held claims against Ally?"

11 And my direction to the witness is
12 if you had conversations outside the
13 mediation context on that topic you can
14 tell Mr. Cohen. If you had conversations
15 within the mediation, however, that's
16 subject to the confidentiality order.

17 MR. COHEN: Okay. So let's go
18 back up to an earlier question and reset
19 the stage.

20 BY MR. COHEN:

21 Q. The first question that I asked
22 you is when you went into the mediation you
23 had no sense of potential claims against Ally.
24 And you said I knew there were prospective
25 claims against Ally, yes. And the basis for

1 L. KRUGER

2 those claims were the conversations that we
3 talked about, amongst others, with your
4 counsel.

5 So my questions are limited to
6 before you went into the mediation, what was
7 your understanding of the prospective claims
8 against Ally?

9 A. I need to correct that because it
10 seemed to me when I was engaged in February,
11 the mediation process was under way and all of
12 the conversations I had with various members
13 of the committee, various -- what are now
14 called consenting claimants, counsel,
15 financial advisors, all of that took place in
16 the context of mediation.

17 Q. What work outside of the mediation
18 context did you personally do to assess
19 positions you were hearing within the
20 mediation?

21 MR. KERR: Objection.

22 A. I don't think any. I think
23 everything that I heard was in the context of
24 the mediation.

25 Q. And so you listened to what you

1 L. KRUGER

2 heard in the mediation and outside of
3 mediation you didn't do anything to
4 independently verify the positions that were
5 being taken?

6 A. When you say outside mediation I'm
7 not quite sure what you mean.

8 Q. Well, if you go into the mediation
9 and someone says X is the fact, do you go back
10 to your office and determine whether, in fact,
11 X is a fact or not?

12 A. It seemed to me that if I went
13 back to my office and determined whether X was
14 a fact under those circumstances that would be
15 a part of mediation as I understand it.

16 Q. Okay. And you're going to follow
17 an instruction not to testify as to that?

18 A. Correct.

19 Q. Did you work with creditors to
20 resolve interdebtor and intercreditor
21 disputes?

22 A. I certainly did.

23 Q. All right. And how were you able
24 to resolve interdebtor and intercreditor
25 disputes? What specifically did you do?

1 L. KRUGER

2 A. We had lots of presentations, lots
3 of conversation. We had lots of documents.
4 Participated in negotiating with the various
5 interested parties.

6 Q. With respect to the interdebtor
7 review specifically, what did you do to
8 resolve those interdebtor disputes?

9 A. I looked at the relationships
10 among the various Debtors. Considered those.
11 Considered the relationship with the parent
12 company, AFI.

13 Q. And when you looked at those
14 relationships what were you looking for?

15 A. To better -- to understand the
16 operations of the company and its
17 relationships.

18 Q. What did you come to understand?

19 A. The operation of the company and
20 its relationships.

21 Q. Okay. And what conclusion did you
22 reach as a result of you looking at the
23 relationships to understand their operations?

24 A. That I knew a lot more about the
25 company and its operations when I was done

1 L. KRUGER

2 looking than I did when I arrived in February.

3 Q. And with respect to resolving
4 interdebtor disputes now that you knew more
5 than did you before, what conclusions did you
6 draw?

7 A. I'm not sure I understand the
8 question. You don't draw conclusions. You
9 just -- in terms of resolving issues among the
10 parties. I don't think they're conclusions.
11 I think there are just results that I
12 understood better of the relationships.

13 Q. One of your specific
14 responsibilities, you've already agreed with
15 me, was to work with the creditors to resolve
16 intercreditor disputes.

17 A. Yes.

18 Q. What result did you achieve?

19 A. I achieved a result of the global
20 settlement.

21 Q. And with respect to interdebtor
22 disputes, how was that resolved?

23 A. That was encompassed within the
24 global settlement agreement.

25 Q. And how was that resolved within

1 L. KRUGER

2 the context of the global settlement?

3 MR. KERR: Objection. Go ahead.

4 A. Through negotiation.

5 Q. And what was the result?

6 A. The global settlement and the plan
7 of reorganization that's now on file.

8 Q. And how did that treat interdebtor
9 disputes?

10 A. It treats the relationship
11 between -- I'm not sure I understand the
12 question but I'm assuming -- I shouldn't
13 assume. It treats the relationship between
14 ResCap and AFI.

15 Q. What do you mean when you say it
16 treats the relationship between ResCap and
17 AFI?

18 A. It settles the relationship
19 between those parties.

20 Q. Is AFI a debtor?

21 A. No, it's not.

22 Q. I'm asking you about the
23 interdebtor disputes.

24 A. Could you be more specific as to
25 what you're asking precisely now?

1 L. KRUGER

2 Q. Well, when you understood that you
3 were being appointed as the CRO and one of the
4 things that you were required to do was work
5 with creditors to resolve interdebtor
6 disputes, what did you understand that to
7 mean?

8 A. I understood that to mean was that
9 creditors had claims against various of the
10 Debtors. I needed to understand and analyze
11 those claims, understand the relationship of
12 those claims to the various Debtors.

13 Q. Okay. Are you familiar with the
14 Ad Hoc Committee of JSN Noteholders?

15 A. Yes, I am.

16 Q. You're familiar with the term JSN
17 noteholders more generally?

18 A. Yes.

19 Q. What is your understanding of the
20 claims that the JSN noteholders have against
21 the various Debtors?

22 A. Sitting here today I don't
23 remember all their claims but I believe that
24 they have securities with respect to perhaps
25 some portion of the Debtors.

1 L. KRUGER

2 Q. What is your understanding of the
3 security interest that the JSN noteholders
4 have against some portion of the Debtors?

5 A. Sitting here today I'd have to
6 look at the actual documents so I don't really
7 recall how to answer that question.

8 Q. You don't know generally?

9 A. Generally I think they -- as I
10 said, they had some claims against some of the
11 Debtors.

12 Q. Okay. Do you know whether the JSN
13 noteholders had claims against the
14 intercompany claims by and amongst the various
15 Debtors?

16 MR. KERR: Objection.

17 THE WITNESS: May I answer?

18 MR. KERR: You can answer.

19 A. I was aware that they asserted
20 that claim.

21 Q. Did you do anything to confirm or
22 deny that assertion?

23 A. Yes, I did.

24 Q. What did you do?

25 A. I reviewed those claims, the

1 L. KRUGER

2 account intercompany claims with my counsel,
3 with the financial advisors, with other
4 counsel and financial advisors involved in the
5 proceeding. I settled those claims as part of
6 the global settlement. And it was always my
7 understanding that there was a serious
8 question as to whether or not JSNs had claims
9 on the intercompany claims, had liens on the
10 intercompany claims. Because I believe those
11 may be general intangibles and as I understood
12 it, JSNs did not have liens on general
13 intangibles.

14 Q. Let me make sure I understand what
15 you're saying. You understood that the JSNs
16 were asserting claims -- liens on the
17 intercompany claims, correct?

18 A. Yes.

19 Q. So you investigated those claims.
20 Did you come to a definitive determination
21 that the JSNs did not have a lien on the
22 intercompany claims?

23 A. That was my conclusion was I did
24 not think they had liens on the intercompany
25 claims.

1 L. KRUGER

2 Q. What is the basis of that
3 conclusion?

4 A. Well, I think the -- well, I'll
5 give you a fulsome answer.

6 The intercompany claims -- I think
7 that's what they really are. I'm not sure
8 that they are actually collectible and had
9 value. But the intercompany claims are, as I
10 understand the discussions with counsel and
11 others, and forming my own opinion with
12 respect to them, are general intangibles. My
13 understanding is, and I think the court has
14 confirmed, that the JSNs do not have liens on
15 general intangibles.

16 I don't know how else to respond
17 to that.

18 Q. Did you have any understanding in
19 your capacity as CRO whether the JSNs asserted
20 that they have a lien on claims against Ally?

21 A. Yes. They asserted that as well.

22 Q. Okay. Did you do any
23 investigation as to the validity of that
24 claim?

25 MR. KERR: Objection. What claim?

1 L. KRUGER

2 The claim that they had liens?

3 MR. COHEN: The liens against
4 Ally.

5 A. Liens again the proceeds of the
6 Ally settlement? Is that the question you're
7 asking me?

8 Q. Well, let's start with you
9 understand that ResCap asserted that it had
10 claims against Ally, correct?

11 A. Yes.

12 Q. And do you understand that the JSN
13 group asserted that they had liens against
14 those claims against Ally?

15 A. I've heard that assertion.

16 Q. Okay. What have you done to
17 confirm or deny that assertion?

18 A. I reviewed that assertion with my
19 counsel, with counsel for the other creditors
20 in the group, looked at the relationship
21 between the parties, looked at possible claims
22 that might be asserted by the estate causes of
23 action against Ally or AFI.

24 I came to the conclusion, based on
25 those conversations and my own understanding,

1 L. KRUGER

2 that they did not have claims against proceeds
3 of the Ally conclusion.

4 Q. How did you come to that
5 conclusion?

6 A. I think I just described that.

7 Q. Well, what information led you to
8 that conclusion?

9 A. Conversations with counsel looking
10 at underlying security agreements. Looking at
11 the flow of claims. And coming to my own
12 conclusion that they were not Ally liens
13 against the AFI proceeds.

14 Q. When you say looking at the flow
15 of funds, what do you mean?

16 A. Well, the AFI contribution came
17 into the Debtors' estates. And I believe the
18 JSNs asserted a claim to those proceeds. I
19 don't think it's a value claim.

20 Q. Why don't you believe it's a valid
21 claim?

22 A. Because I don't think their lien
23 attached to those proceeds.

24 Q. Why don't you think their lien
25 attached to those proceeds?

1 L. KRUGER

2 A. My understanding of the lien
3 documents and the transaction as I described
4 was that there were no proceeds that their
5 liens attached to in the lower funds from Ally
6 into the rest of the assets.

7 Q. What specifically led you to that
8 conclusion?

9 A. Conversations with counsel. My
10 own conclusions. Review of documents.

11 Q. Okay. So let's talk about your
12 own conclusions and review of documents. What
13 were your own conclusions -- what in your own
14 conclusions led you to the belief that the JSN
15 liens did not apply to the Ally contribution?

16 A. It's just a conclusory statement
17 on my part that they don't apply to those
18 liens.

19 Q. Okay. Other than your conclusory
20 statement based on your own analysis separate
21 and apart from your counsel you have no other
22 basis --

23 A. No, I don't think I --

24 Q. Let me finish my question, please.

25 MR. KERR: Lou, let him answer

1 L. KRUGER

2 finish his question and then you can
3 answer it.

4 Q. Based on -- you said other than
5 your own conclusory statement, based on your
6 own view of it, you had nothing else?

7 MR. KERR: Objection.

8 A. I don't think that was the
9 question that you asked me.

10 Q. Okay. Let's go back to the
11 question I asked you.

12 My question was: "What were your
13 own conclusions -- what in your own
14 conclusions led you to believe that the JSN
15 liens did not apply to the Ally contribution?

16 "ANSWER: It was just a conclusory
17 statement on my part that they don't
18 apply."

19 So other than your conclusory
20 statement, what is the basis of your belief
21 that the JSN liens don't apply to the Ally
22 contribution?

23 MR. KERR: Objection. Asked and
24 answered.

25 A. Conversations with my counsel,

1 L. KRUGER

2 with counsel for the parties. That's what led
3 me to form my conclusion.

4 Q. Did you do any of your own work to
5 come to that conclusion?

6 A. I thought that was my own work
7 when I had those conversations with them.

8 Q. Okay. With respect to the Ally
9 contribution, do you have an understanding as
10 to whether that's in satisfaction of claims
11 that ResCap may have against Ally?

12 A. That's not my understanding.

13 Q. What is your understanding is the
14 basis of the Ally contribution?

15 A. I mean, I don't know what was in
16 Ally's mind so it's hard for me to say what
17 they were thinking, but my view, if you were
18 to ask me that question, was I believe Ally
19 wanted to arrange to have a clean slate going
20 forward. So they wanted to make a
21 contribution sufficient but not a penny more
22 than necessary to bring what I would call
23 peace in the valley with respect to these
24 claims. And the ResCap estates and the ResCap
25 creditors that was interested in this.

1 L. KRUGER

2 Q. Was part of obtaining peace in the
3 valley getting ResCap to release its potential
4 claims against Ally?

5 MR. KERR: Objection.

6 A. There are general releases
7 provided for in the plan of reorganization.

8 Q. And those general releases would
9 apply to the various claims that you
10 considered that ResCap would have against
11 Ally, right?

12 A. Yes.

13 Q. So it's not your testimony that
14 there is no relationship between the Ally
15 contribution and its desire to have peace in
16 the valley and the release of the potential
17 claims that ResCap has against Ally; is that
18 right?

Plaintiff's
Objection
42:13-43:2:
Objection to
form;
misleading;
confusing

19 MR. KERR: Objection to form.

20 A. I'm not sure what Ally's view, as
21 I said, was, what they thought they were
22 doing.

23 I think from ResCap's perspective,
24 we were trying to have settlement of all the
25 claims including those claims that we might

1 L. KRUGER

2 have against Ally.

3 Q. Okay. And so one of the
4 currencies that you were able to negotiate
5 with Ally was these potential claims that
6 could be asserted against Ally, right?

7 A. That's not how the negotiations
8 really went.

9 Q. So there was no discussion of the
10 claims.

11 A. I had previously seen reviews of
12 claims that might exist provided by the
13 defense for Creditors Committee, by various of
14 the other creditors, my Morrison & Foerster.
15 I saw Ally's responses to those.

16 So I was informed as to what
17 people thought claims might be and what
18 claims -- and what Ally's view of those claims
19 were.

20 Q. What did the Creditors Committee
21 explain to you about potential claims against
22 Ally?

23 MR. KERR: Again, if that -- you
24 can answer Mr. Cohen's question as long
25 as you don't disclose any discussions

1 L. KRUGER

2 that occurred during the mediation
3 process.

4 A. That was all provided to me during
5 the context of the mediation.

6 Q. Okay. Did you have any
7 discussions with respect to potential claims
8 against Ally that might sound in breach of
9 contract?

10 MR. KERR: Objection. Same
11 direction.

12 A. Those are all -- everything that I
13 discussed or learned about with respect to
14 Ally, claims against Ally, and Ally's defenses
15 to those claims, all took place as part of the
16 mediation process.

17 Q. All right. Let's talk about your
18 motivation as CRO. You testified that you
19 can't know what's in Ally's mind so you don't
20 know why they put \$2.1 billion on the table,
21 right?

22 MR. KERR: Objection.

23 A. I don't know what their motivation
24 was other than, as I said, I assume they
25 wanted releases.

1 L. KRUGER

2 Q. And your motivation was to make
3 that contribution as high as possible, right?

4 A. Correct.

5 Q. And so you were prepared to
6 release as many claims as you could to get
7 that pie as big as it could be, right?

8 A. No. I don't think that's how it
9 worked. And this gets, you know -- I'm always
10 uncomfortable because these are all close to
11 mediation kind of questions.

12 I believe that Ally was interested
13 in making the contribution for the general
14 release, not just from the ResCap-related
15 parties, but from third parties as well. They
16 wanted a clean slate.

17 Q. How did you determine the
18 sufficiency of the contribution relative to
19 the value of the releases?

20 MR. KERR: Objection.

21 A. It was just a negotiation. I
22 wanted more. They wouldn't pay more. The
23 question was what they were prepared to pay be
24 sufficient to get the vast majority of the
25 creditors, including the JSN, a recovery that

1 L. KRUGER

2 worked for all parties. That seemed to be a
3 number that did.

4 Q. So would you turn to again on
5 Kruger Exhibit 1, the engagement letter, which
6 is at the back of that document.

7 MR. KERR: Do you know what page
8 it is? Page -- oh, it's the very last
9 attachment.

10 MR. COHEN: Yeah, exactly. It's
11 Exhibit 4 to the Motion.

12 A. Um-hum.

13 Q. I'd like to direct your attention
14 to -- you can look at as much or as little of
15 this as you want. This is your engagement
16 letter that was approved by and incorporated
17 into the court's order.

18 MR. KERR: Objection. This -- I
19 think that this engagement letter was
20 amended and that one was approved by the
21 court order.

22 MR. COHEN: In connection with the
23 March hearing?

24 MR. KERR: Um-hum.

25 MR. COHEN: Okay. I think for our

1 L. KRUGER

2 purposes that won't be relevant. But
3 we'll see.

4 BY MR. COHEN:

5 Q. Did there come a time where you
6 sought to have the scope of the services that
7 are listed under paragraph 1(a), Duties, up to
8 (b) changed?

9 A. No.

10 Q. So you never sought to be
11 discharged of any of those responsibilities?

12 A. No.

13 Q. Okay.

14 MR. COHEN: Let's mark this as
15 Kruger 2.

16 (Kruger Exhibit 2, Notice of
17 Debtors' Motion Pursuant to Sections
18 105(a) and 363(b) of the Bankruptcy Code
19 for an Order Approving Amendment to
20 Engagement Letter with Debtors' Chief
21 Restructuring Officer, Lewis Kruger as
22 Chief Restructuring Officer, marked for
23 identification as of this date.)

24
25 BY MR. COHEN:

1 L. KRUGER

2 Q. Mr. Kruger, the reporter has
3 handed you a document that has been marked
4 Kruger Exhibit 2.

5 A. Yes.

6 Q. It's entitled Notice of Debtors'
7 Motion Pursuant to Sections 105(a) and 363(b)
8 of the Bankruptcy Code For an Order Approving
9 an Amendment to the Engagement Letter With
10 Debtors Chief Restructuring Officer, Lewis
11 Kruger.

12 A. Yes.

13 Q. Have you seen this document
14 before?

15 A. Yes, I have.

16 Q. What was the purpose of this
17 document?

18 A. It was to arrange a possibility of
19 my receiving a "success fee" subject to
20 question and challenge at the conclusion of
21 the proceedings based on an application for
22 allowance at the time.

23 Q. And this motion was approved?

24 A. This was approved by the court I
25 believe.

1 L. KRUGER

2 Q. Is this something that you
3 reviewed before it was submitted to the court?

4 A. Yes, I had.

5 Q. And were there any changes that
6 you suggested that were not accepted by the
7 Debtors before it was filed?

8 A. Not that I recall sitting here.

9 Q. Do you recall seeing a red line of
10 your engagement letter at the back of this
11 motion? And it is actually the last two
12 pages.

13 A. Sitting here today, I don't recall
14 seeing it.

15 Q. Okay. So I'd like to focus your
16 attention on the last page of the red line and
17 Romanette vii.

18 A. Yes.

19 Q. You can see that the scope of your
20 services there changes from the original
21 engagement letter.

22 MR. KERR: Objection.

23 Q. Do you see that?

24 MR. KERR: Assumes facts not in
25 evidence.

1 L. KRUGER

2 Answer if you want.

3 A. The words have changed, yes.

4 Q. Okay. Why was that change made?

5 A. Sitting here today, I don't know
6 why.

7 Q. Okay. You know this document was
8 filed with the court about a month ago?

9 A. Um-hum, yes.

10 Q. Did you negotiate these changes
11 with anyone?

12 A. Did I negotiate them, no.

13 Q. Did anyone discuss them with you
14 before they were presented to the court?

15 A. I think I read them at the time.
16 But I don't recall a conversation about them.

17 Q. So you don't recall asking anybody
18 a question as to why the scope of your
19 services was being changed?

20 A. No.

21 Q. Okay. If you'd look at Romanette
22 number ix, your engagement letter used to
23 provide that the CRO shall provide advice
24 regarding the allocation of any AFI settlement
25 proceeds amongst the Debtors' creditors.

1 L. KRUGER

2 Do you see that?

3 A. Yes.

4 Q. Why was that stricken from your
5 engagement letter?

6 MR. KERR: Objection. Objection -- if
7 you know the answer you can answer.

8 A. I don't know.

9 Q. Did anybody discuss that they were
10 taking that away from your scope of services
11 with you?

12 MR. KERR: Objection.

13 A. No.

14 Q. When you read this did you ask
15 anybody why that was no longer a part of your
16 scope of services?

17 MR. KERR: Objection.

18 A. No. But I could answer the
19 question if you want to know why it changed.

20 Q. Certainly.

21 A. Because the allocation was now
22 present in the reorganization plan.

23 Q. So you believed your work on that
24 was done.

25 A. I think the reorganization plan

1 L. KRUGER

2 stands for itself. Speaks for itself.

3 Q. Is there any possibility that that
4 allocation may change?

5 A. Life is uncertain. It's always
6 possible.

7 Q. And as we sit here today, that's
8 no longer within the scope of your services,
9 right?

10 A. I assume that the extent of my
11 services were -- need to be doing something
12 differently. If the situation arises that
13 would not apply.

14 Q. Okay. Why were they modified to
15 take it away?

16 MR. KERR: Objection. Assumes
17 facts not in evidence.

18 Q. So it would be your expectation
19 that if the issue of allocation came up again
20 you would remain capable and competent of
21 doing that, right?

Plaintiff's
Objection
52:18-53:4: Lack
of personal
knowledge/
speculative (FRE
602)

22 A. Yes.

23 Q. And you could have done it in ways
24 different than came out of the mediation,
25 correct?

1 L. KRUGER

2 A. I guess I could have but why would
3 I? That's what I thought was a great success
4 and I would not want to change it.

5 Q. Okay. And have you read Judge
6 Lyons' expert report in this case?

7 A. No.

8 Q. Has anyone discussed it with you?

9 A. I heard about it.

10 Q. What have you heard about it?

11 A. Judge Lyons apparently tries to
12 build a bottom-up view of the Ally
13 contribution by allocating sums of money or
14 some amounts to claims or value to claims in
15 order to utilize and get up to the
16 2.1 billion.

17 Q. All right. Is there a reason you
18 have not read that report?

19 MR. KERR: Objection.

20 A. No. I just have a lot of stuff to
21 read and I read as much as I can.

22 Q. Were you interested in his
23 methodology?

24 A. Not particularly.

25 Q. Why not?

1 L. KRUGER

2 A. Because with all due respect I
3 don't think that's how we negotiated the Ally
4 contribution.

5 Q. Is that one of the ways the
6 contribution would have been negotiated?

7 MR. KERR: Objection.

8 A. I'm not sure it could have been
9 negotiated that way because I don't think as a
10 practical matter, with all due deference to
11 Judge Lyons, that one can value the individual
12 claims in a meaningful way. I think the only
13 way to negotiate this is to seek an overall
14 settlement with Ally and then see if that
15 settlement amount was sufficient to create
16 sufficient combination of funds together with
17 the estate's values to satisfy the needs of
18 the creditors.

19 Q. Well, if that's your view, why did
20 you agree in your original engagement letter
21 that among the services you were going to
22 provide was advice regarding the allocation of
23 proceeds?

24 A. The allocation of proceeds -- just
25 to be clear, when I say allocation of

Plaintiff's
Objection
54:5-18: Lack of
personal
knowledge/
speculative (FRE
602)

1 L. KRUGER

2 proceeds, I'm thinking about the allocation of
3 the \$2.1 million -- \$2.1 billion from Ally.
4 I'm not thinking of building up from the
5 bottom up a pyramid of various claims and
6 trying to assign values to those claims in
7 order to get to the 2.1. That never happened.

8 Q. From the Debtors' side how do they
9 determine where that value would flow?

10 A. We determined it in several ways.
11 First, we looked at the total sum which was
12 coming from Ally, which was the 2.1. I
13 recognized that Ally was not going to be more
14 than that for us.

15 We then looked at the values
16 available and respective distributions from
17 the various Debtors' estates.

18 We then looked at the claims from
19 the various Debtors' estates.

20 We then looked at the expectations
21 of the consenting claimants as to what they
22 might receive ultimately from the proceedings.

23 And then we allocated the proceeds
24 together with the Debtors' estates to try to
25 meet those requirements.

1 L. KRUGER

2 Q. Was there any effort made to
3 determine which of those estates may have
4 presented -- may have possessed claims that
5 were being released in the Ally settlement?

6 A. All of the Debtors' were released
7 under the --

8 Q. I understand that. But you also
9 understand that there were a wide of variety
10 of claims that could have been asserted
11 against Ally, correct?

12 A. There were some from the estate
13 causes of action as distinguished from the
14 causes of action perhaps individual creditors
15 might have.

16 Q. Correct. I'm talking about
17 individual estate causes of action, that there
18 were a variety of estate causes of action that
19 could have been asserted; is that right?

20 A. There were some, yes.

21 Q. Right. You read Judge Gonzalez's
22 examiner's report?

23 A. I read it once.

24 Q. It was a long read I'm sure.

25 A. It was a very long read.

1 L. KRUGER

2 Q. But he identified very specific
3 claims that he thought may or may not be
4 asserted or may or may not be successful,
5 correct?

6 MR. KERR: Objection.

7 A. Correct.

8 Q. And he identified specific debtors
9 who may have causes of action based on certain
10 contracts between certain debtors, correct?

11 MR. KERR: Objection.

12 A. He did do that. I don't
13 necessarily agree with him, but he did do
14 that.

15 Q. What specifically -- where
16 specifically do you not agree with him?

17 A. Well, the tax allocation one is a
18 good example of that. My view of that -- and
19 I was aware of it before we entered into the
20 plan support agreement and the supplemental
21 term sheet. My view of that was that there
22 was an executed tax allocation agreement
23 between ResCap and AFI. And that this
24 argument was that somehow or other that ought
25 to be set aside and that an unexecuted

Plaintiff's
Objection
57:2-14:
Inadmissible
hearsay and
double hearsay
(FRE 802),
irrelevant (FRE
401, 402), unduly
prejudicial (FRE
403), lack of
personal
knowledge (FRE
602), lack of
foundation (FRE
602, 901, 903),
incomplete (FRE
106)

1 L. KRUGER

2 agreement should now become the agreement.

3 I thought that was probably a
4 non-starter, quite frankly. And that coupled
5 with the fact that from the JSN's perspective
6 I assume that setting aside the executed
7 agreement, the second one, if you will, with
8 an avoidance action, the JSNs did not have
9 liens on the avoidance action.

10 So, as I say, with all due respect
11 to Judge Gonzalez, I disagree with his
12 conclusion.

13 Q. Did you attempt to put any value
14 on the fact that you had the former Chief
15 Bankruptcy Judge with the Southern District of
16 New York having a view that there may be some
17 merit to that claim?

18 A. No.

19 Q. Okay. So you valued that claim at
20 zero?

21 A. No, I didn't say I valued it at
22 zero. I just thought it was a non-starter.
23 I took into consider -- when I participated in
24 seeking the global settlement, I had a lot of
25 information provided me by lots of different

Plaintiff's
Objection
58:13 - 17
Irrelevant (FRE
401, 402)

1 L. KRUGER

2 parties, and lots of different reasons. Their
3 strengths and weaknesses of their own
4 positions, et cetera.

5 And I also was aware the tax
6 allocation was another thing that I thought
7 about and was part of my thinking. But I
8 didn't look at it and say, Oh, I ought to
9 ascribe \$25 worth of value to that. That just
10 wasn't how it happened.

11 Q. Okay. Were there other specific
12 claims that Judge Gonzalez identified that
13 specific Debtors may hold that you thought he
14 got it right?

15 A. Well, you know, 2,000 pages, I'm
16 sure there's some in there that if I went back
17 and read again I would find that he got some
18 right.

19 Q. Okay.

20 A. The ones that come to -- not that
21 came up that he got right. I got another one
22 that I think he got wrong.

23 Q. Okay. Let's hear which other ones
24 one did he get wrong?

25 A. I think he got wrong the

1 L. KRUGER

2 bank-to-broker claim. There was an issue of
3 revenue recognition in the AFI and ResCap
4 family of companies. And I think it was just
5 done wrong for accounting purposes. And when
6 they realized they had done it wrong, they
7 reversed it.

8 So I was aware of that. And I
9 thought people -- you know, people make
10 errors. When they catch their errors they
11 reverse their errors. I didn't believe that
12 they rise to the kind of claim that Judge
13 Gonzalez thought it might.

14 Q. What analysis did you do to come
15 to that conclusion?

16 A. I read Judge Gonzalez's report.
17 But, as I said, I had already been aware of
18 this issue, so to speak, previous to the plan
19 support agreement and the supplemental term
20 sheet. And I thought about it, I took it into
21 consideration as I did everything else, and
22 came to the conclusion that it was not -- in
23 my mind I thought that it was not an important
24 issue because I believed that the -- as I
25 said, it was an error, the error was found,

1 L. KRUGER

2 corrected, and I thought that was the end of
3 it.

4 Q. So other than taking it into
5 consideration and thinking about it, did you
6 do anything else to --

7 A. Well, I --

8 Q. Let me finish.

9 -- to determine if Judge Gonzalez
10 got it right or wrong?

11 MR. KERR: Lou, Lou, let him
12 finish his question. Then you can
13 answer.

14 A. Okay.

15 I have some comments about that.
16 The first, of course, is that the -- Judge
17 Gonzalez's report came out after the plan
18 support agreement and the supplemental term
19 sheet. That's first.

20 Second, in all of these
21 discussions I discussed all of these items
22 including the bank-to-broker claim, the tax
23 allocations agreement, with my counsel, with
24 other counsel for the parties in the case,
25 financial advisors and the like. That's when

1 L. KRUGER

2 I formed my opinion and formed my judgment.

3 Q. Okay. So in terms of timing, you
4 made the deal on the global settlement and
5 then you got the Gonzalez report, right?

6 A. Correct.

7 Q. Okay. But did you take the time
8 to read the Gonzalez report?

9 A. Yes, I did.

10 Q. And when you read the Gonzalez
11 report was there anything that made you
12 rethink whether you should have done things
13 differently in structuring the global
14 settlement for the plan support agreement?

15 A. Not at all.

16 Q. Why not?

17 A. Because I thought that the global
18 settlement was an extraordinary achievement.
19 I thought that when I arrived originally the
20 creditors were at each other's throats, there
21 were intercreditor issues, interdebtor issues,
22 fights with Ally. All of that was going on.
23 And I was able, together with Judge Peck's
24 invaluable assistance, the Creditor
25 Committee's assistance, various counsel's

1 L. KRUGER

2 assistance, create a situation where there was
3 a global settlement that resolved all of the
4 issues among the parties provided for an
5 allocation that they were all, I'm sure not
6 happy with since no one is getting paid in
7 full, but at least comfortable enough with
8 their own recoveries and the recoveries of
9 others, that they were all willing to
10 participate in the global settlement.

11 And in the process of that we also
12 thought about the JSNs. And even though I
13 personally believe that their secured position
14 was probably some number like 1.7 or
15 \$1.8 billion, they nonetheless agreed to pay
16 the JSNs in full on the effective date their
17 allowed claim plus pre-petition interest.

18 So I thought they were also being
19 well treated during this process.

20 Q. What was the basis for your view
21 that the JSN position was 1.7 or \$1.8 billion?

22 A. Lots of conversation with counsel,
23 financial advisors, both my own and Morrison &
24 Foerster. Centerview. Also the Creditors
25 Committee and their counsel, their advisors.

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2 And then some of the advisors for individual
3 creditors as well.

4 Q. To what extent in coming up with
5 that conclusion did you undertake to
6 understand the value of the intercompany
7 claims?

8 A. I looked at the intercompany
9 claims and asked that I be made familiar with
10 them and FTI -- excuse me -- and the company's
11 financial people, I'm not quite sure who, but
12 the company's financial people, looked at
13 intercompany balances.

14 And, as I understood more and more
15 about them over the passage of time, I
16 realized that the intercompany balances were
17 present for accounting reasons and did not in
18 my mind represent collectible, enforceable
19 debt, that there was a history -- enormous
20 history of debt forgiveness, some \$16 billion
21 of debt having been forgiven in the period
22 2007 to 2012; that these intercompany
23 balances, most of them did not have interest
24 rates associated with them, interest paid by
25 them, maturity dates, some little bits of

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2 documentation for some of them, but most of
3 them not.

4 So I thought that when I settled
5 those intercompany claims at zero for the
6 purposes of the global settlement that was the
7 reasonable and responsible thing to do.

8 Q. And you did that on a wholesale
9 basis, correct?

10 A. Yes.

11 Q. You did not look at particular
12 intercompany transactions where, for example,
13 there was loan documentation. That didn't
14 matter to you?

15 MR. KERR: Objection.

16 A. I did look at those. But the
17 reality of it is for myself that I thought
18 that if we went down the road of trying to go
19 back and look at a specific intercompany
20 balance to see what its history was, where it
21 came from, I would then find myself in the
22 position of having to reverse -- or at least
23 creditors would ask to have reversed the
24 \$16 billion in forgiveness, put all of that
25 back into the pot. And I don't think it's

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2 possible to isolate one intercompany claim and
3 say, Oh, we're going to focus on this one.

4 I assume once you start down that
5 the road, you then need to do the work to
6 focus on all of them. That work seemed to
7 me -- I don't want to call it a fool's errand,
8 but it would take years and enormous effort to
9 do. And I thought that doing that would also
10 interfere with the completion of the global
11 settlement and the confirmation of the plan.

12 Q. In what way would it interfere
13 with the completion of the global settlement
14 and the confirmation of the plan?

15 A. Well, the global settlement in my
16 mind -- I describe it two different ways. I
17 describe it as a mosaic where if you take out
18 one piece of it the mosaic no longer fits.

19 Or, alternatively, I think of it
20 as a Roman arch full of stones. And if you
21 pull out one stone the arch collapses.

22 I don't think you can start down
23 the road of dealing with one issue without
24 jeopardizing the entire settlement. So I
25 would assume that if I was now to look at a

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2 specific intercompany claim and try to find
3 out what its value is, I assume I should be
4 looking at all the intercompany claims.
5 That's a couple years' process at the very
6 least. Expensive. And I'm not sure could
7 ever really be resolved because you need to go
8 back and try to find people who are involved
9 in the decisions as to what they -- what they
10 recorded, why they recorded it, and what was
11 done.

12 It seemed to me that all of that
13 would defeat the prospect of having a global
14 settlement now and the Ally contribution and
15 everything would fall apart.

16 Q. Do you know whether prior to your
17 appointment as CRO the lawyers at Morrison &
18 Foerster and FTI actually did a lot of work on
19 determining the validity of the intercompany
20 claims?

Plaintiff's
Objection
67:16-68:8: Lack
of personal
knowledge (FRE
602)

21 MR. KERR: Objection.

22 A. I don't know.

23 I should correct myself. I
24 actually do know that.

25 Q. Okay.

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2 A. They did an investigation, yes.

3 Q. They did a substantial
4 investigation of that.

5 A. Right.

6 MR. KERR: Objection.

7 A. They did an investigation. How
8 substantial, I don't know.

9 MR. COHEN: Let's mark this as
10 number 3.

11 (Kruger Exhibit 3, e-mail dated
12 Monday, 9/17/2012 with attachment bearing
13 production numbers UCC12846 through
14 UCC12852, marked for identification as of
15 this date.)

16 BY MR. COHEN:

17 Q. Mr. Kruger, did they brief you on
18 that investigation?

19 A. Well, when I arrived on the scene,
20 one of the things wanted to know about was the
21 intercompany claims and I started to get into
22 the lead, so to speak, and to really
23 understand the issues that were -- confronted
24 the parties. And so I asked Morrison &
25 Foerster and FTI to review for me and to --

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2 and I asked FTI specifically to review the
3 intercompany claims and inform me as to what
4 they found in their investigation.

5 So I heard about this. But it was
6 part of bigger effort, if you will, on my own
7 part understanding the claims.

8 Q. All right. And what did FTI tell
9 you about their investigation into the
10 intercompany claims?

Plaintiff's
Objection
69:8-71:4:
Inadmissible
hearsay (FRE
802)

11 MR. KERR: And you can answer that
12 question but be careful again that you do
13 not disclose any confidential --
14 privileged communications you had with
15 counsel.

16 A. They reviewed with some of the
17 management of the Debtor, I don't know who
18 specifically but people in the finance area of
19 the Debtor's intercompany claims to determine
20 that the source of those claims, understanding
21 of how those claims were recorded, the process
22 of forgiving those claims, as I said, which
23 was the major part of what took place, those
24 claims are forgiven on a regular basis, in
25 billion dollar amounts regularly, and they

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2 looked at all of that and reported to me.

3 Q. What did they report to you on the
4 process of forgiving those claims?

5 A. As part of overall picture of the
6 claims what they reported to me was that the
7 claims are often forgiven in order to meet net
8 worth requirements of individual debtors,
9 individual debtor companies during the course
10 of their business operations. And that the
11 claims were very difficult to find a history
12 for and very difficult to think about
13 reapplying the previously forgiven claims.

14 Q. Did they tell you that was true
15 with respect to all of the intercompany claims
16 or just some of them?

17 A. I don't think we ever -- I don't
18 think I myself ever looked at the individual
19 specific claims in the sense that I looked at
20 all 20,000 or 30,000 or however tens of
21 thousands there are of those claims. I can
22 say that I was given more detailed information
23 with respect to some of the claims.

24 Q. Okay. And with respect to some of
25 the companies did they tell you that the

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2 intercompany claims had the indicia of debt
3 and not equity?

4 A. No.

5 Q. They never told you that with
6 respect to one intercompany claim.

7 A. My own view of those claims, as I
8 said, is that I don't believe any of them are
9 debt. I believe that they're all claims -- I
10 think of debt as being represented in some
11 fashion by maturity dates, interest rates,
12 documentation. And when you look at the
13 individual claims, as I said, you'd need to go
14 back and put back into the hopper all of the
15 forgiveness over the last several years and
16 then that would lead -- maybe more of an
17 answer than you wanted -- but would lead to
18 falling apart of the global settlement and
19 would lead to litigate everybody with
20 everybody about everything. Not just about
21 any one specific claim. I don't think you can
22 look at a claim in isolation. I think you
23 need to look at all of them.

24 Q. And you practiced law prior to
25 becoming CRO for 40-plus years?

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2 A. Yes.

3 Q. In your practice you've
4 represented debtors?

5 A. Yes.

6 Q. You've represented debtors with
7 centralized cash management systems?

8 A. Yes.

9 Q. And you've represented debtors
10 with intercompany claims?

11 A. I think they must have had
12 intercompany claims. But sitting here today I
13 don't recall what they were.

14 Q. Okay. So you can't recall any
15 case that you've ever worked on where there
16 were intercompany claims?

17 A. I didn't say that. I think that
18 the cases that I worked on there probably were
19 cash management systems and intercompany
20 relationships.

21 Q. Okay. In your experience, your
22 40-plus years experience that led you to be
23 selected and appointed as CRO, what is your
24 view as to where courts typically come down on
25 centralized cash management systems as debt

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2 versus equity?

3 MR. KERR: Objection.

4 A. Don't know.

5 Q. You don't know?

6 Did anybody give you any
7 information that reflected Morrison &
8 Foerster's view on that?

9 MR. KERR: Objection. Again, you
10 can answer that question yes or no but I
11 don't want you to be revealing any
12 privileged communication.

13 A. Well, I had conversation with
14 counsel about that, as I said.

15 Q. Okay. So I'd like you to take a
16 look at this entire document and let me
17 explain to you the way I understand it to
18 work.

19 On the last page is a chart of the
20 top ten intercompany claims. At Bates number
21 UCC 12848 there is an analysis that's titled
22 MoFo Draft, Privileged and Confidential For
23 Settlement Discussions Purposes Only, that
24 give their analysis of these intercompany
25 claims.

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2 I'd like you to review this
3 document, please.

4 (Document review.)

5 A. Well, I've read it through
6 briefly, yes.

7 Q. Okay. So do you understand -- the
8 way I think the document works, on the last
9 page it lists out the intercompany and then
10 the numbers tie to the analysis?

11 MR. KERR: Objection.

12 A. I see what -- yes, I think I do.

13 Q. Okay. So let's look at, for
14 example, on the last page, item number 2,
15 where ResCap is the time borrowing entity,
16 Residential Funding Company is the lending
17 entity. And then you have the amounts which
18 are, you know, 1.8 billion.

19 Do you see those?

20 And then you go to Bates number
21 UCC 12848.

22 A. Um-hum.

23 Q. Which is the MoFo draft. And you
24 see under Debt MoFo's comments on that
25 particular \$1.8 billion intercompany claim.

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2 A. Right.

3 Q. And MoFo notes that cash is
4 continuingly being swept upstream for
5 centralized treasury management.

6 In your experience that's a common
7 practice, right?

8 MR. KERR: Objection.

9 A. I think it is.

10 Q. Okay. And, MoFo notes, that as
11 RFC generates cash that cash gets swept
12 upstream to ResCap. Also fairly typical in a
13 centralized cash management system, correct?

14 A. I assume if -- I don't know the
15 answer to that really.

16 Q. Okay.

17 A. I'm not an accountant.

18 Q. Okay. And then MoFo notes that
19 the cases note that the intercompany claims
20 arising from the operation of the cash
21 management system are enforceable as debt.

22 In your 40-years plus experience
23 as a restructuring lawyer, do you agree with
24 that statement?

25 A. I'm not sure whether or not

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2 they're right in saying that -- I did not
3 think of this as debt so it's hard for me to
4 really respond to that. I didn't think these
5 were enforceable debts.

6 Q. Okay. And you'll see the next
7 sentence MoFo notes that claims were
8 identified as receivables and payables on
9 interco books. Sufficient formality for an
10 intercompany loan.

11 Do you see that?

12 A. Yes, I do.

13 Q. Do you share that conclusion?

14 A. No, I don't.

15 Q. Why?

16 A. Because it seems to me that
17 formality is not really the issue.

18 As I look at it, and I looked at
19 it, remember, from a point of view of a
20 settlement of these proceedings, my sense of
21 these claims were that they were on the books
22 and records as intercompany balances, put
23 there because Ally's and AFI's accounting
24 system require them to do so, that they were
25 treated differently by the various

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2 subsidiaries of the companies, that they all
3 uniformly go at it the same way. And the fact
4 that they were intercompany balances to my
5 mind did not necessarily mean that these were
6 collectible and enforceable obligations of the
7 entities, particularly with the kind of
8 history that is present here where there has
9 been massive forgiveness of debt.

10 It's just hard for me to think
11 this is really debt in some real sense of the
12 word. I think it's basically an accounting
13 issue more than it is an enforceable
14 collectible sum of money.

15 Q. Okay. With respect to item number
16 2, which is this \$1.8 billion intercompany
17 claim, what did you do to determine whether
18 there was any instrument evidencing the
19 indebtedness?

20 MR. KERR: What did he do
21 personally?

22 MR. COHEN: In his capacity as
23 CRO, yeah.

24 MR. KERR: Okay.

25 A. I discussed these claims with my

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2 counsel, with my financial advisors, with FTI.

3 Beyond that, nothing.

4 Q. Okay. Now, let me set the context
5 for this. You understand that my clients
6 assert that they have a lien on this
7 \$1.8 billion intercompany claim and you have
8 determined that it gets wiped out because it's
9 not really debt, right?

10 MR. KERR: Objection.

11 A. Oh, I determined that in the
12 context of the global settlement that it was
13 reasonable for me to treat the intercompany
14 claims as -- with no significance because to
15 treat them otherwise would mean that I have to
16 go through the process of trying to understand
17 and deal with each of the intercompany debts,
18 reverse the debt forgiveness over the last
19 several years, leading to the fact that there
20 would not be a global settlement, there would
21 not be an Ally contribution, and I would undue
22 everything that I had worked so hard to
23 accomplish.

24 Q. But if my clients have a lien on
25 that intercompany claim, how do you have the

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2 power to extinguish that collateral?

3 A. Well, first of all, I don't
4 believe that your clients -- and I don't
5 accept the premise. I don't believe your
6 clients have a lien on the intercompany claim,
7 because I believe that those are general
8 intangibles and your clients don't have liens
9 on general intangibles.

10 Q. Okay. If they do -- and you
11 understand that's a disputed issue. The
12 Debtors have one view on it and the JSNs have
13 a different view on it.

14 A. I understand that that may be
15 true.

16 Q. Okay. But you don't propose
17 extinguishing that collateral, the
18 intercompany --

19 MR. KERR: Objection. Go ahead.

20 A. For the purposes of the global
21 settlement, yes.

22 Q. Okay. If my clients actually have
23 a security interest and a lien on that
24 intercompany, how can you extinguish it for
25 purposes of the global settlement?

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2 MR. KERR: Objection.

3 A. I think it's no different than
4 dealing with any other group of creditor
5 claims. I've gotten your clients -- as I
6 understand what I've done, I'm paying them in
7 full for their pre-petition -- allowed claim
8 and their pre-petition interest. I'm not sure
9 they have any more entitlement than that. If
10 they want to show that they're oversecured
11 somehow, they're free to do so. If the judge
12 concludes that they are they'll get paid
13 post-petition interest.

14 Q. And this would be one of the ways
15 to establish, this lien, that they could the
16 establish that they were oversecured, correct?

17 A. It might be.

18 Q. Correct. In determining that you
19 were going to just eliminate all of the
20 intercompany claims, you understand that there
21 are legal tests that you go through when you
22 recharacterize debt as equity? Do you
23 understand that based on your 40 years of
24 practice?

25 A. Yes.

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2 Q. Exactly. And so there are certain
3 things that courts look at and you have to
4 satisfy those tests before you can do that,
5 correct?

6 A. Right. But I'm not assuming that
7 this is debt so I start perhaps from a
8 different premise.

9 Q. Well --

10 A. These do -- in my mind, these are
11 intercompany balances on the books and records
12 of the company. I don't believe that they, in
13 the main, are debt. And I think that it was
14 reasonable, appropriate and responsible for me
15 to treat them for global settlement purposes
16 as being a bad debt.

17 Q. Who in your accounting department
18 of your company did you talk to when you
19 determined that this wasn't debt?

20 A. Lots of people at FTI and Morrison
21 & Foerster.

22 Q. I'm talking about the employees at
23 the company. Not the paid consultants. The
24 people who actually work at the company and
25 booked these entries. Who did you talk to

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2 when you came to that conclusion?

3 A. I spoke to many people at the
4 company. I'm not sure who specifically as I
5 sit here today, but I guess I spoke to Barbara
6 Westman, Tammy Hamzehpour, Jill Horner.

7 Q. Ms. Dondzilla?

8 A. I don't know that I ever spoke
9 with her.

10 Q. Did you review their deposition
11 testimony? Those three women have been
12 deposed.

13 A. No, I did not.

14 Q. Would it surprise you to know that
15 they testified under oath that they thought it
16 was debt?

17 MR. KERR: Objection. Misstates
18 the evidence. That's just -- come on,
19 David.

20 A. Whatever they called it, I
21 believe, as I said, that this is not debt.
22 For my purposes and for the purposes of the
23 global settlement this was not debt as I
24 understood it.

25 Q. Why do you qualify it by saying

Plaintiff's
Objection
82:14-16:
Objection to
form;
misleading;
confusing;
unduly
prejudicial

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2 for purposes of the global settlement? I mean
3 it's either debt or equity.

4 MR. KERR: Objection.

5 A. I think of it as intercompany
6 balances, most of which did not have -- I
7 repeat -- I'll say it again. Most of these
8 obligations or intercompany balances, I guess
9 is the right word, intercompany balances, lack
10 maturity dates, interest rates, interest,
11 documentation, and they're tens of thousands
12 of them.

13 To try to isolate one or two of
14 them and say, Aha, gottcha because this one
15 looks like it may have some of those
16 characteristics is to me, when I think about
17 it, an invitation and an obligation to look at
18 all of them to see whether or not they all
19 stand the test of time. All -- God knows how
20 many of them -- 20,000, some number like that
21 I'm told of intercompany balances on the books
22 of the various companies. I assume that doing
23 that would destroy the prospect of a global
24 settlement because nobody would stand still
25 long enough to allow that to happen. And

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2 there would be no -- as I said, there would be
3 no Ally contribution, no global settlement.
4 And I think that the global settlement is in
5 the best interest of all the creditors, all of
6 the estates, and quite frankly the JSNs.

7 Q. Did it ever occur to you to apply
8 a materiality threshold to the intercompany
9 claims?

10 A. No.

11 Q. Why not?

12 A. Some are bigger than others. Some
13 of the forgivenesses are bigger than others.
14 I didn't apply materiality in either
15 direction. I just looked at them and thought
16 to myself after discussion that these were not
17 really debt. I didn't think that they were
18 effectively collectible.

19 Q. How much time did you spend on
20 that analysis?

21 A. Many, many hours.

22 Q. Can you give me an estimate?

23 A. No.

24 Q. Can you give me a ballpark?

25 A. No.

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2 Q. So you don't know whether it was
3 20 or a hundred?

4 A. No. I'm not -- there's no way
5 that I can give you that kind of an estimate.
6 I engaged full time in the endeavor of dealing
7 with these companies and dealing with the
8 reorganization plan, dealing with the
9 creditors and various constituencies, and
10 primarily in recent months dealing with the
11 JSNs. I've spent a lot of time on the issue
12 of intercompany payments. Whether that was 20
13 hours or 200 hours, I don't know. But it's a
14 lot of hours.

15 Q. Well, if it was your view -- did I
16 understand your testimony that you spent a lot
17 of time on the intercompany claims in
18 connection with the JSNs?

19 A. Sure.

20 Q. If it's your view that the JSNs
21 don't have a lien on the intercompany claims
22 why were you worried about them at all in
23 connection with the intercompany claims?

24 MR. KERR: Objection.

25 A. Because the JSNs assert claims and

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2 liens and I wanted to understand the nature of
3 their claims and go back to why I thought they
4 were not appropriate in the first instance,
5 which is that I don't believe they have liens
6 on the intercompany claims.

7 Q. But there are two separate issues
8 there. One is whether they have a lien and
9 the second is whether there is value on the
10 intercompany claims. If you believe the
11 answer to the first question is no, the JSNs
12 don't have a lien, then why do you care about
13 the second question?

14 MR. KERR: Objection.

15 A. I'm not sure that I do.

16 Q. Then why have you spent
17 significant amount of time on it?

18 MR. KERR: Objection.

19 A. Because I'm sitting here today
20 being deposed about it. I'm also going to be
21 a witness at confirmation so I want to
22 understand every aspect of everything that's
23 going to take place in the confirmation
24 hearing and at this deposition to be able to
25 answer questions like yours.

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2 Q. Do you understand that the
3 financial advisors and the legal advisors for
4 purposes of their analysis of intercompany
5 claims have focused on the largest of the
6 intercompany claims?

7 MR. KERR: Objection.

8 A. I assume they did that because I'm
9 looking at the document that you handed me.

10 Q. Okay. Why didn't you follow that
11 path as well?

12 A. I read these. I looked at and was
13 aware of the largest of the intercompany
14 claims. But it didn't change my view which
15 for the purposes of the global settlement, as
16 I've said, if I was going to isolate one or
17 two of these and say, Ah, these look -- on
18 some great continuum from zero to a hundred,
19 these look like they're 5s instead of zeros, I
20 thought I would have to go back and look at --
21 because creditors would all insist upon it,
22 they would all say, Well, what about me under
23 those circumstances, why can't I have blah,
24 blah, blah, I assume I would be going back and
25 looking at all of the claims to understand the

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2 origin of the claims, the impact of the
3 forgiveness of the indebtedness on those
4 claims and go back and look at all of them.

5 That would defeat, as I said, my
6 purpose which, as I said, my purpose was
7 finding a global settlement that was
8 acceptable, if not embraced, but acceptable,
9 to the vast majority of the creditors. And I
10 take a lot of comfort from the fact that some
11 6,800 claims filed with the exception of the
12 JSNs, and perhaps my friends at Syncora, there
13 really are no major objections to this claim.
14 It's been approved and endorsed by huge
15 numbers of consenting claimants. I must have
16 done something right.

17 Q. So putting aside the issue of the
18 validity or not of the JSNs' assertion of a
19 lien on the intercompany claims, assume some
20 other creditor had a lien on the intercompany
21 claims, an uncontested lien, is it your view
22 that the greater good of the global settlement
23 justifies the treatment proposed in the plan
24 of key elimination of the intercompany claims?

25 MR. KERR: Objection.

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2 A. I'm not sure I understand your
3 question.

4 Is the question could they enforce
5 a lien if they had a lien? Or value the lien
6 if they had a lien? I would assume that that
7 would be the argument the JSNs make to the
8 court.

9 Q. And I understand your view that
10 the JSNs don't have a lien and therefore this
11 treatment is appropriate.

12 MR. KERR: Objection. Misstates
13 his testimony.

14 Q. Is that your view?

15 A. No. My view is whether they have
16 a lien or not, global settlement and the
17 resolution providing no value and no
18 consideration of the intercompany claims is
19 appropriate both to the fact that it enables
20 us to go forward and have the global
21 settlement and also because the global
22 settlement enables us to pay the JSNs in full
23 their allowed claim plus pre-petition
24 interest.

25 Q. And if the JSNs have a lien that

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2 would entitle them to the payment of
3 post-petition interest, would they get that
4 under your plan?

5 A. God bless them. Yes, they would.

6 MR. COHEN: Want to take a break?

7 MR. KERR: Sure. Sure, sure,
8 sure.

9 THE VIDEOGRAPHER: The time is
10 11:26 a.m. This is the end of tape
11 number one. We're off the record.

12 (Recess taken.)

13 THE VIDEOGRAPHER: The time is
14 11:41 a.m. This is the start of tape
15 number two. We are on the record.

16 BY MR. COHEN:

17 Q. Mr. Kruger, I'm going to hand you
18 a document that has previously been marked as
19 Westman Exhibit 1. Would you take a moment to
20 look at this document.

21 (Document review.)

22 MR. COHEN: For the record, it's
23 titled the Ad Hoc Group of Junior Secured
24 Noteholders Notice of Rule 30(B)(6)
25 Deposition.

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2 (Document review continuing.)

3 A. I've read it through briefly.

4 Q. Have you seen Westman Exhibit 1
5 before?

6 A. No.

7 Q. Do you understand that you've been
8 designated to testify as a 30(b)(6) witness on
9 certain topics in this deposition today?

10 A. Yes.

11 Q. When did you find out you were
12 going to be giving 30(b)(6) testimony in this
13 deposition?

14 A. In the past couple of weeks.

15 Q. Other than the preparation that we
16 talked about this morning earlier about
17 getting ready for the deposition, did you do
18 anything in particular to testify as to the
19 topics as to which you've been designated?

20 A. I looked at those topics and made
21 sure that I could respond to most questions
22 with respect to them.

23 Q. Okay. So let's go through and
24 make sure we're in agreement on the topics.

25 If you turn to page 8 of this

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2 document where the deposition topics begin,
3 I'll just run these through, can you testify
4 truthfully and completely to item 2, Romanette
5 (vii), the decision to waive, settle, cancel
6 or discharge the intercompany claims?

7 A. No.

8 Q. In your view who is the best
9 person at the company who would be able to
10 testify as to the decision to waive, settle,
11 cancel or discharge the intercompany claims?

12 A. Well, I have waived the
13 intercompany claims for global settlement
14 purposes so I'm not sure what other approvals,
15 policies, procedures -- I'm not sure what all
16 of those words mean.

17 MR. KERR: I think there's some
18 confusion with the witness. Lou, if I
19 may, what he's focused on is not the
20 entire part of 2, but just the very last
21 Romanette (vii).

22 MR. COHEN: That's correct.

23 THE WITNESS: Oh, I'm sorry.

24 MR. KERR: That's all right. So
25 that's a mistake.

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2 A. On me. I'm sorry.

3 Q. All right. So --

4 A. I'm that person.

5 Q. Okay. We'll clean up the record.

6 Can you testify truthfully and
7 completely as to the company's decision to
8 waive, settle, cancel or discharge the
9 intercompany claims?

10 A. For purposes of the global
11 settlement, yes.

12 Q. Would you look at item 5. Can you
13 testify truthfully and completely as to all
14 matters relating to analysis concerning and
15 decision to enter into the RMBS trust claim
16 settlement?

17 A. Yes.

18 Q. Item number 6, can you testify
19 truthfully and completely to all matters
20 relating to the analysis concerning and
21 decision to enter into the MBIA settlement?

22 A. Yes.

23 Q. Item number 7, can you testify
24 truthfully and completely as to all matters
25 relating to analysis concerning and decision

1 L. KRUGER

2 to enter into the FGIC settlement?

3 A. Yes.

4 Q. Item number 8 on the next page.

5 Can you testify truthfully and
6 completely to all matters relating to the
7 consideration of whether the RMBS trust claim
8 settlement, MBIA settlement, and or FGIC
9 settlement, should be subordinated pursuant to
10 Section 510(b) of the Bankruptcy Code?

11 A. Yes.

12 Q. Can you testify truthfully and
13 completely as to all matters relating to the
14 analysis concerning and the decision to enter
15 into the settlement of the allowed claims of
16 the private security claimants?

17 A. Yes.

18 Q. Item number 10, can you testify
19 truthfully and completely as to all matters
20 relating to the Debtors' determination to
21 agree to the third party releases in
22 connection with the plan?

23 A. Yes.

24 Q. Item number 11, can you testify
25 truthfully and completely as to all matters

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2 relating to the analysis concerning and the
3 decision to agree to the Ally contribution?

4 A. Yes.

5 Q. And item number 12, can you
6 testify truthfully and completely as to all
7 matters relating to the allocation of the Ally
8 contribution on a claim-by-claim basis and the
9 allocation of the Ally contribution set forth
10 on page 41 of the revised disclosure
11 statement?

12 A. Yes. So long as the little (i)
13 the circle, the allocation of the Ally
14 contribution on a claim-by-claim basis is not
15 meant to say that I somehow looked at each
16 individual claim against Ally, gave it a
17 value, and then that's how I got to the 2.1
18 billion. Because that's not the right answer.
19 I did not do that. I could certainly testify
20 about it, but the way this is written I don't
21 think is correct.

22 Q. And what is incorrect about
23 paragraph 12, Romanette (i)?

24 A. I don't think the Ally
25 contribution is being allocated on a

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2 claim-by-claim basis.

3 Q. Okay. So the corporate view is
4 that wasn't done and you're the best witness
5 to explain that that wasn't done.

6 A. That's correct.

7 Q. And can you explain the reason
8 that wasn't done?

9 MR. KERR: Objection. Asked and
10 answered.

11 A. Because we did not -- in the
12 negotiation with Ally that produced the
13 \$2.1 billion contribution from them, it was
14 not done on a bottoms-up basis trying to
15 ascribe a value to each of the prospective
16 claims the parties or the debtor might have
17 against Ally.

18 Q. Is that work that could have been
19 done?

20 MR. KERR: Objection.

21 A. I have no idea whether that
22 actually could have been done. I don't know
23 whether it's possible to allocate value. I
24 think you asked me this before. I don't think
25 it's possible to necessarily allocate value in

Plaintiff's
Objection
96:18-97:5
Lack of
personal
knowledge/
speculative
(FRE 602)

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2 a meaningful way to each of the prospective
3 claims that might be asserted against Ally by
4 the various constituencies including the
5 debtor.

6 Q. And what is the basis of that
7 belief?

8 A. The basis of my belief comes out
9 of my desire to see the global settlement
10 accomplished because I believe that to do
11 anything other than that would involve a
12 course of conduct that would not lead to a
13 sensible conclusion. I don't believe, as I
14 said, that you can value individual items
15 individually and that -- everybody would have
16 their own view as to which of the items, what
17 are the values. I don't think that's
18 sellable.

19 Q. Who did you consult with in
20 reaching that conclusion?

21 MR. KERR: Objection.

22 A. It's my own conclusion but I
23 consulted with many, many people. All the
24 various counsel for the parties, all the
25 financial advisors. And then I came to my own

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2 conclusion that that was the right way to go
3 was to negotiate a top-down number with Ally
4 and then see if the number was big enough to
5 make it work for all the creditor
6 constituencies and for the estates.

7 Q. Did you ask anybody if a
8 bottoms-up approach could be done?

9 A. It was part of every conversation
10 was are we doing this the right way and there
11 was no doubt in my mind that the only way to
12 do this was as I described which was a
13 top-down view of the world.

14 Q. My question was different. Did
15 you ask anybody if a bottoms-up view could be
16 done?

17 A. I don't think I specifically asked
18 anybody whether they could do that because I
19 just in my own mind gave no credence to that
20 possibility.

21 Q. Would you look at paragraph 20 on
22 page 11. All matters related to partial
23 consolidation as set forth in the plan
24 including but not limited to any investigation
25 conducted by the Debtors to ascertain whether,

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2 Romanette (i), creditors relied on the Debtors
3 collectively or in any combination of subsets
4 as a single entity; Romanette (ii), the
5 Debtors' affairs were hopelessly entangled;
6 and Romanette (iii), the prejudice to
7 creditors of the proposed consolidation would
8 outweigh its benefits.

9 Can you testify truthfully and
10 completely as to those subjects?

11 A. Yes, I can.

12 Q. In your 40 years experience as a
13 bankruptcy practitioner, have you been
14 involved in dealing with substantive
15 consolidation issues?

16 A. Yes.

17 MR. KERR: Objection.

18 A. Sorry. Yes, I have.

19 Q. Then item 21, All matters related
20 to the treatment of the junior secured
21 noteholders claims under the plan. Can you
22 testify truthfully and completely as to that?

23 A. Yes.

24 Hopefully I've been doing so.

25 MR. COHEN: Mark this as 4.

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2 (Kruger Exhibit 4, Notice of
3 Filing of Revised Disclosure Statement
4 for Debtors' Revised Plan of
5 Reorganization Pursuant to Chapter 11 of
6 the Bankruptcy Code, marked for
7 identification as of this date.)

8 A. I have it.

9 Q. I will not ask you to read Kruger
10 Exhibit 4 which is the Notice of Filing of
11 Revised Disclosure Statement For the Debtors'
12 Revised Plan For Organization Pursuant to
13 Chapter 11 of the Bankruptcy Code from cover
14 to cover. But you can look at it -- at any
15 section you want to. I'll direct you to
16 specific pages.

17 Are you familiar with this
18 document?

19 A. Yes, I am.

20 Q. All right. For ease of reference
21 we're going to use the page numbers at the top
22 of the pages rather than the page numbers at
23 the bottom.

24 A. Okay.

25 Q. And so what I'd like you to do is

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2 to turn to page 28 of 196 at the top and the
3 sections that we're worry going to be talking
4 about is Article II, the Global Settlement and
5 Implementation of the Plan.

6 A. Page 28?

7 Q. 28 of 196.

8 A. Article II?

9 Q. Yeah.

10 A. Okay.

11 Q. And if you would take a look at
12 the two paragraphs at the bottom of that page
13 that carries over to the next page I would
14 appreciate it.

15 A. Um-hum.

16 (Document review.)

17 A. Okay. I've read that.

18 Q. All right. Who, to your

19 knowledge, was involved in negotiating the

20 first Ally settlement, the \$750 million

21 contribution?

22 A. I have no idea.

23 Q. Do you know how that number was

24 arrived at?

25 A. No.

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2 Q. Do you know whether the Debtors'
3 attempted to value their claims against Ally
4 before agreeing to a \$750 million number?

5 A. I have no idea.

6 Q. Do you know whether the Debtors'
7 retained any potential experts to help them
8 determine whether a \$750 million contribution
9 from Ally was appropriate?

10 A. I do know that the Debtors'
11 conducted an investigation of their claims
12 against Ally, but who actually conducted the
13 investigation, whether they were retained
14 experts, I don't know sitting here today.

15 Q. Okay. What did you do when you
16 became CRO to bring yourself up to speed as to
17 the move away from 750 million to the
18 mediation?

19 MR. KERR: Objection.

20 A. Well, I met with -- in the very
21 first few weeks of my engagement with Judge
22 Peck to understand his view of the mediation,
23 with obviously Morrison & Foerster,
24 Centerview, FTI, the Creditors Committee, its
25 counsel, its financial advisors, to understand

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2 where we are and understand each of the
3 creditors' various views of their own claims
4 and their views with respect to other
5 creditors' claims. And that's what I did.

6 Q. What is your understanding as to
7 the reason the \$750 million contribution was
8 ultimately rejected?

9 A. I think there was a conclusion by
10 the creditors and the Debtor that that was an
11 insufficient sum when added to the proceeds
12 from the distribution of the Debtors' estates
13 to satisfy the creditors' minimum needs by way
14 of a resolution of the various competing
15 issues in the case that would make them want
16 to enter into a global settlement.

17 Q. Has there been any attempt by the
18 estate to compute the total value of its
19 claims against Ally?

20 A. Not that I am aware of.

21 Q. Why not?

22 A. As I said before, I don't know
23 that there's any really way to do that.
24 Everybody will have their own view of what the
25 value of each individual claim might be and

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2 I'm not sure there's any purpose to be served
3 by it. We have an opportunity to have a
4 global settlement that I think is in
5 everybody's best interest and I think the
6 settlement that we've achieved is that
7 settlement. And it's appropriate for us to do
8 it as we did it but just from a top-down
9 basis.

10 Q. Why isn't the Debtors' view of the
11 value of the claims an important thing to know
12 in determining the reasonableness of the
13 settlement?

14 MR. KERR: Objection.

15 A. I'm not sure how you value the
16 claims that the debtor might have against
17 Ally. What it does say to me is that if we
18 were going to pursue those claims individually
19 we would go back to the litigation state in
20 which the creditors would be suing Ally using
21 the estate causes of action. Individual
22 creditors would be suing Ally on their own
23 particular causes of action. The creditors
24 would all be suing each other. We would have
25 years of chaos and enormous cost to this

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2 estate. None of that made sense to me so
3 that's why the Debtors have not looked at
4 that. We looked at what do we need to get
5 from Ally by way of a contribution that
6 together with the distributable assets from
7 the Debtors' estate enabled us to compromise
8 all the various competing creditor claims in a
9 way that the creditors are, as I've said, not
10 necessarily happy about but prepared to live
11 with. That's what we did.

12 Q. And in your 40 years experience
13 practicing law have you ever done a litigation
14 analysis?

15 A. Of what a claim is worth?

16 Q. Yes.

17 A. I've not done it but I've had
18 presentations to me of claim analysis.

19 Q. And is that something in your 40
20 years of practice you've typically relied on
21 in going into the settlement negotiations?

22 A. It would depend on the
23 circumstances, but ordinarily speaking, most
24 of the time lawyers come to me when they give
25 me that kind of stuff and say here's the

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2 range. Well, you know, it's interesting that
3 that's their view of the range. I didn't
4 think this needed a view of the range. What
5 this needed was a global settlement. We
6 achieved that. I mean, that was the goal and
7 we've done that.

8 Q. Why didn't you think this needed a
9 view of the range?

10 A. Because I don't think it would be
11 possible to evaluate in a meaningful way the
12 various claims of the various competing
13 parties, both Debtors' claims and claims of
14 others outside the Debtor. How would -- you
15 know, there's no way for me to do that. It
16 would take years. I mean, in a perfect world
17 if you wanted perfection, every creditor to
18 pursue their claims, the debtor would object
19 to those claims. Ally would object to those
20 claims to the extent they were being sued.
21 And in four or five years we know precisely
22 what everybody's allowed claim might be and
23 whatever recovery there might be from AFI at
24 that point. But they were probably an
25 insolvent estate. And, I recall, for example,

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2 the JSN suggesting in one of their pleadings
3 an objection to an extension of exclusivity
4 that the Debtors' estate would become
5 administratively insolvent I think they
6 suggested sometime in the spring of next year.

7 Well, there's no way if we had a
8 litigation scenario that this is going to get
9 done in the spring of next year. This would
10 go on for years. That alternative was an
11 unacceptable alternative so for me there
12 wasn't any point in worrying about whether I
13 was building up from the bottom up. I needed
14 to get a settlement sufficient to work to
15 achieve a global settlement.

16 Q. Did anyone give you an estimate of
17 how long it would take to do a range of value
18 of the claims the Debtors' --

19 A. I'm not --

20 MR. KERR: And just again I don't
21 want you to reveal any communications
22 with counsel, but --

23 MR. COHEN: And I also want to
24 finish my sentence.

25 MR. KERR: Oh, I apologize. I

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2 thought you were done.

3 MR. COHEN: My question.

4 Both you of let me finish my
5 question.

6 Q. Did anybody give you a range -- or
7 a date estimate as to how long it would take
8 to do a range of value of the Debtors' claims
9 against Ally?

10 A. No.

11 Q. Did anybody tell you how much that
12 would cost?

13 A. No.

14 Q. Did you ever ask anybody?

15 A. No.

16 Q. Why not?

17 A. Because I didn't think it was
18 meaningful, quite frankly. As I said, I
19 thought the way to do this was to find the
20 combination of value from Ally and from the
21 various distributable amounts of the Debtors'
22 estates to create a pot of sufficient funds to
23 produce the global settlement.

24 Q. Let's go to page 49 of Kruger
25 Exhibit 4 which is the chart -- 49 at the top.

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2 I'm sorry.

3 A. Oh. I'm sorry.

4 Q. Which is the allocation chart.

5 A. Almost. Ready.

6 Q. There you are.

7 How was this allocation of money
8 to the Debtors' determined?

9 A. Well, at the conclusion of -- and
10 I guess -- I get concerned about the mediation
11 part of this.

12 MR. KERR: Yeah. Again, if you
13 can answer that question without
14 revealing what happened in the mediation
15 you're free to do so. But to the extent
16 you would -- we're subject to the
17 mediation confidentiality.

18 MR. COHEN: I understand.

19 MR. KERR: And so to the extent
20 you can answer that question in general
21 terms without disclosing what happened in
22 the mediation feel free to do so. But we
23 need to be very cognizant of that, Lou.

24 MR. COHEN: And for my purposes
25 I'm not trying to breach the mediation

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2 confidentiality.

3 MR. KERR: I know that. I realize
4 that. We're just trying to navigate
5 around this.

6 A. Starting with the total number,
7 that represents a combination of available
8 distributable funds out of the estate, ex-cost
9 of administering the estate. Plus the Ally
10 contribution.

11 Q. I think you're on the wrong page.
12 I'm on 49.

13 A. Oh, I'm sorry. This is just the
14 Ally contribution.

15 Q. Exactly.

16 A. I'm looking at the next page.
17 Sorry.

18 Q. Would you like my question again?

19 A. No.

20 Q. Okay.

21 A. This analysis, and the
22 distribution, came about obviously in the
23 mediation process, but it came about because
24 we looked at first the available distribution
25 of the Debtors' funds and each of the various

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2 silos that we were creating for the purposes
3 of the reorganization plan and the disclosure
4 statement, ResCap, GMACM and RFC, and what
5 funds were available at each of those entities
6 in the Debtors' estates, what the creditor
7 claims were at each of those Debtors' estates,
8 what the consenting creditors were hoping to
9 achieve by way of recoveries for themselves
10 out of the combination of the assets in the
11 Debtors' estates and the Ally contribution.

12 And so to put all of that into the
13 hopper and came up with an allocation that we
14 believe appropriately represented the
15 recoveries that creditors were seeking to
16 obtain and for me making sure that it was in
17 my mind reasonable, fair and equitable and
18 appropriate for the various creditors who were
19 not a part of the negotiations and at the same
20 time obviously thinking about paying in full
21 the JSNs their pre-petition claim and their
22 pre-petition interest.

23 Q. Would it be fair to say that this
24 allocation was a negotiated allocation?

25 A. It was part of -- it was -- I

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2 think that's the wrong word. I don't think it
3 was a negotiated allocation. I think the
4 negotiations were seeking the compromises
5 among the various creditors with respect to
6 their competing interests and claims and this
7 was a waterfall, if you will, created to
8 satisfy, as I said, not only the requirements
9 of the individual parties, but also to take
10 cognizance of the availability of funds at the
11 various Debtors' estates, the creditor claims
12 at the various Debtors' estates and the like.

13 So I don't think it's necessarily
14 a negotiation.

15 Q. So let me try and phrase that
16 another way.

17 You determined as part of the
18 global settlement what each of the consenting
19 creditors needed to sign onto the global
20 settlement and then came up with this
21 allocation to make that work?

22 MR. KERR: Objection. Misstates
23 his testimony.

24 A. That's not what I said. I said
25 that we looked at both what was available

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2 under the Debtors' estates. We looked at what
3 was available -- what the claims were at each
4 of the various Debtors' estates. We looked at
5 the competing claims of the creditors who had
6 negotiated with the Debtor and among
7 themselves with the benefit of Judge Peck's
8 intervention, and came up with a conclusion
9 that this would be an appropriate allocation
10 of funds in order to both reflect the claims
11 that were present in the various Debtors'
12 estates in these three silos, the assets that
13 were available there, and the distribution of
14 the Ally proceeds that would encompass the
15 results that creditors wanted to see achieved
16 and in my mind was also fair and appropriate
17 and reasonable for those parties who were not
18 part of the mediation and the negotiations.

19 Q. To be clear, when you said the
20 claims that were variable on the Debtors'
21 silos you're talking about the proofs of
22 claims filed by creditors against the Debtors
23 and not claims that the Debtors held against
24 Ally.

25 A. That's correct.

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2 Q. And this chart on page 49 of
3 Kruger Exhibit 4 does not reflect an analysis
4 to allocate the 2.1 billion based upon which
5 legal entity may hold certain causes of action
6 against Ally, correct?

7 A. Well, that's too simplistic in my
8 mind to say because, for example, we allocated
9 proceeds to the ResCap Debtors and we did that
10 in part in recognition that some of the
11 creditors had asserted claims against ResCap
12 and against Ally, and aiding and abetting
13 claims, alter-ego claims and the like, and it
14 might not be inappropriate for them to have
15 some benefit in recovery from the Ally
16 contribution at the ResCap level.

17 Q. How were those determinations
18 made?

19 A. Which determinations?

20 Q. The determinations you just talked
21 about; that you recognized that some creditors
22 had asserted claims against ResCap and Ally
23 for the aiding and abetting claims?

24 A. I looked at those claims. I
25 discussed those claims. I had many, many

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2 conversations about those claims. I
3 participated in the negotiation of the
4 resolution of those claims. And that's how I
5 did it.

6 Q. Okay.

7 (Kruger Exhibit 5, Report of
8 Arthur J. Gonzalez, As Examiner, marked
9 for identification as of this date.)

10 BY MR. COHEN:

11 Q. So the next exhibit is Kruger
12 Exhibit 5, which are excerpts from the
13 examiner's report. If you would like to see
14 the whole examiner's report I'm sure we could
15 have someone deliver it.

16 A. We can go and get it on my desk.

17 MR. KERR: And let me just state
18 for the record, if you want to ask
19 questions about this, we object to this.
20 The court has said this is going to be
21 hearsay. It's not coming in. But I just
22 want to state my objection to the use of
23 this but you can ask questions if you
24 want.

25 MR. COHEN: Well, I don't think I

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2 can move things into evidence in a
3 deposition anyway so --

4 MR. KERR: I'm not asking -- I
5 realize that. I just making sure my
6 objection is on the record.

7 BY MR. COHEN:

8 Q. Would you look at, in Kruger
9 Exhibit 5 -- we can use the page numbers at
10 the top, which is 29 of 47, or at the bottom
11 I-29. And this goes on to I-33 at the bottom.

12 A. Yep.

13 Q. When the Debtors received the
14 examiner's report did they ever try and
15 conduct a similar analysis?

16 A. No, we did not.

17 Q. Why not?

18 A. There's no need to. We had
19 achieved a global settlement. What's the
20 point of examining it if everybody is prepared
21 to accept the result? And it's been accepted
22 now by the overwhelming number of creditors.
23 What's the point of trying to do that?

24 Q. Was the allocation chart we just
25 looked at in Kruger Exhibit 4 prepared before

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2 or after the examiner's report?

3 A. I think -- I don't recall. I
4 assume we -- I don't -- I just don't recall
5 sitting here whether it was before or after.

6 Q. Was it --

7 A. I take that back. It was before.

8 Q. Okay. And after receiving the
9 examiner's report and having the opportunity
10 to re-examine -- let me rephrase that.

11 There's a lot of "examines" in
12 that question.

13 Having received the examiner's
14 report and having the opportunity to review
15 his findings and his analysis, did you
16 consider going back and changing the
17 allocation table in Kruger Exhibit 4?

18 A. No, I did not.

19 Q. Why not?

20 A. Because with all due deference, as
21 I said, to Judge Gonzalez before, I had
22 different views of what the claims were and I
23 also had a view that the global settlement
24 having been achieved was by itself an
25 accomplishment that we should not hinder and

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2 that it was appropriate to go forward just on
3 the allocations that were made and the
4 distribution of funds that we just talked
5 about under the disclosure statement. And it
6 was not necessary to consider any of the
7 things that Judge Gonzalez had raised.

8 Q. With respect to the potential
9 impact on the issue of whether the JSNs are
10 oversecured, did you consider the examiner's
11 report in any way as impacting that issue?

12 A. No, I did not.

13 Q. Why not?

14 A. Well, for two reasons. One is, as
15 I said, in the process of the negotiation with
16 the various competing interests and trying to
17 resolve all of those claims and compromising
18 those claims, we, the Debtor, never lost sight,
19 and I don't think others did, of the presence
20 of the JSNs and we provided for them, payment
21 in full of their allowed claim plus
22 pre-petition interest, I thought, quite
23 frankly, that was a real benefit to the JSNs;
24 and that if they were able to demonstrate that
25 they were oversecured to the satisfaction of

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2 the court, they would get paid whatever their
3 post-petition interest might be. But that
4 Judge Gonzalez's report, all hearsay, is not
5 useful in discussing our thinking about that.
6 It may be helpful in giving JSN some roadmap
7 or whatever they think they have claims to but
8 beyond that...

9 Q. Wouldn't it also give you some
10 roadmap into thinking as to how things may
11 come out?

12 MR. KERR: Objection.

13 A. The roadmap that I had was to
14 complete the global settlement and to get a
15 plan confirmed during lives and bean. I don't
16 mean to be flip about it, but the idea that we
17 were now going to go and look at the various
18 possible claims Ally and sue them on their
19 individual claims and spend the next five
20 years in that litigation, pointless.

21 Q. And, again, it is your view that
22 it was also pointless to try and value -- once
23 you had the Gonzalez report to be try and
24 value those litigation claims.

25 A. Correct. Because if the creditors

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2 were accepting of what had come forward then
3 that seemed to me to be the best evidence that
4 we had an appropriate amount of resolution.

5 Q. We talked at the beginning of the
6 deposition about the scope of your engagement
7 and I think you recall that one of your
8 responsibilities was to allocate the Ally
9 contribution. Is it your view that you
10 discharged that duty by the allocation chart
11 in Kruger Exhibit 4?

12 A. Yes, I believe so. I assume I
13 should say that it reflects the allocation
14 that I approved. It wasn't the first time the
15 allocation was present.

16 Q. Oh, understood. Understood. But
17 Kruger Exhibit 4 was an exercise of that duty.

18 A. Yes.

19 Q. And when you got the Gonzalez
20 report after Kruger Exhibit 4, the allocation
21 chart that we were talking about, you didn't
22 feel the need, given the scope of your
23 assignment, to revisit that decision.

24 A. That's correct.

25 Q. And that was because you had the

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2 global settlement, right?

3 A. Yes. And, as I said, I also
4 respectfully disagree with some of Judge
5 Gonzalez's conclusions.

6 Q. Did you raise any of those with
7 Judge Gonzalez?

8 A. No.

9 Q. Why not?

10 A. It seemed to me there was no need
11 to do so since I was busy procuring the global
12 settlement and getting that organization plan
13 confirmed.

14 Q. Did you have any discussions with
15 the Creditors Committee after the Gonzalez
16 report came out about whether you would need
17 to revisit the allocation in Exhibit 4?

18 MR. KERR: And, again, Lou, you
19 can answer that question as long as it
20 was not part of any mediation process.

21 A. We all talked about the Gonzalez
22 report but I don't think anybody saw a need to
23 revisit the allocations.

24 Q. Had the mediation concluded when
25 the Gonzalez report came out?

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2 A. The Gonzalez report, if my
3 recollection is correct, came out July 3rd. I
4 don't remember the date. I think the
5 mediation, pursuant to court order, was still
6 in place perhaps through July and part of
7 August. Maybe all of August.

8 Q. Okay.

9 MR. COHEN: We're going to go back
10 into intercompany claims. Do you want to
11 have lunch first?

12 MR. KERR: Sure. Why don't we
13 stop and have lunch if you're going to
14 change topics.

15 MR. COHEN: Exactly.

16 MR. KERR: Let's go off the
17 record.

18 THE VIDEOGRAPHER: The time is
19 12:15 p.m. We're off the record.

20 (Luncheon recess taken at 12:15
21 p.m.)
22
23
24
25

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2 A F T E R N O O N S E S S I O N

3 (Time noted: 12:58 p.m.)

4 THE VIDEOGRAPHER: The time is
5 12:58 p.m. We're on the record.

6 * * *

7 L E W I S K R U G E R, resumed and
8 testified as follows:

9 EXAMINATION BY (Cont'd.)

10 MR. COHEN:

11 Q. Mr. Kruger, I'd like to hand you
12 what has been previously marked as Westman
13 Exhibit 13.

14 A. Oh, okay.

15 Q. Could you take a moment to review
16 that document. It's entitled Amended Schedule
17 of Assets and Liabilities For GMAC Residential
18 Holding Company, LLC.

19 (Document review.)

20 A. Wait just one more minute.

21 Q. Certainly.

22 (Document review continuing.)

23 A. Okay.

24 Q. Earlier, before the lunch break,
25 you were testifying generally about your view

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2 that the intercompany claims do not represent
3 debt. Do you recall that?

4 A. Yes.

5 Q. Is it your view that they
6 represent equity contributions?

7 A. I think what they rep -- in my own
8 mind I think what they represent are just
9 intercompany balances where sometimes the
10 intercompany balance was forgotten and treated
11 as capital contribution, but I'm not sure that
12 they always necessarily represent equity.

13 Q. Okay. If they don't -- did I cut
14 you off? I'm sorry.

15 A. No.

16 Q. If they don't represent a capital
17 contribution and they don't represent equity
18 and they don't represent debt, what else could
19 they represent?

20 A. I think just accounting
21 information.

22 Q. So it's your view that they're
23 just journal entries?

24 A. I think they're just journal
25 entries but I could -- I'm not an accountant

1 L. KRUGER

2 so I could be wrong about that. Maybe they do
3 represent capital contributions.

4 Q. And they could also represent debt
5 or equity possibly?

6 MR. KERR: Objection.

7 A. I don't think so. As I said, I
8 don't think these rise to the level of debt.

9 Q. Okay. And over the lunch break
10 have you had time to think about whether there
11 are any other factors that would support the
12 conclusion on your behalf?

13 A. Nope.

14 Q. Okay. In your experience as a
15 bankruptcy practitioner have you had an
16 opportunity to prepare and review schedules of
17 assets and liability for Debtors?

18 A. Yes, I have.

19 Q. Have you seen this particular
20 schedule of assets and liabilities for GMAC
21 Residential Holding Company before?

22 A. No.

23 Q. Okay. I'd like to turn your
24 attention to -- we're using the page numbering
25 at the top of the page of Westman Exhibit 13

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2 which is page 4 of 13.

3 What is -- again, more generally,
4 what is the purpose of filing a schedule of
5 assets and liability with the court?

6 A. To alert creditors as to -- and
7 the court what assets the company believes it
8 may have and what liabilities it may have.

9 Q. Okay. And the intent is not to
10 mislead anybody, is it?

11 A. Certainly not.

12 Q. So you want this schedule to be as
13 accurate as possible, correct?

14 A. Certainly the best information the
15 debtor may have at the time.

16 Q. Okay. And in your tenure as CRO
17 of ResCap, have you found any evidence that in
18 people preparing bankruptcy filings had an
19 intent to mislead anybody?

20 A. Certainly not.

21 Q. Okay. Are you at page 4 of 13
22 with me?

23 A. Yes, I am.

24 Q. Do you see the listing of
25 Creditors Holding Unsecured Claims in the

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2 title line?

3 A. Yes.

4 Q. And do you see the creditors'
5 names listed in the left column?

6 A. I do.

7 Q. And do you see the column titled
8 Intercompany Payable? Or the column titled
9 Date Claim Was Incurred and Consideration For
10 Claim?

11 Do you see that?

12 A. Yes, I do.

13 Q. And do you see under each of those
14 the description is Intercompany Payable?

15 A. Yes, I do.

16 Q. In your experience, what does
17 intercompany payable mean?

18 A. Well, in this case it's not clear
19 to me what it means because it's not clear to
20 whom it is payable. The date is not present.
21 I'm not sure what it means other than, as I
22 said, I think it means an intercompany
23 balance.

24 Q. Okay. In general, does the term
25 intercompany payable have any meaning to you?

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2 MR. KERR: Objection.

3 A. I can't distinguish its meaning
4 outside of the actual case that we're dealing
5 with and in the case that we're dealing with I
6 said I think it represents an intercompany
7 balance.

8 Q. And you don't know whether this
9 intercompany balance is meant to be a capital
10 contribution, do you?

11 A. No, I do not.

12 Q. And you don't know whether it's
13 meant to be a valid and enforceable debt, do
14 you?

15 A. Not these individual ones but, as
16 I said, I didn't believe that they were
17 enforceable intercompany debts and I reviewed
18 the material that I reviewed and/or had
19 conversation about.

20 Q. That's right. But you also
21 testified that you didn't review all of the
22 intercompany obligations, correct?

23 A. That's correct.

24 Q. So in the ones that you reviewed,
25 you didn't find any to be valid debt, but you

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2 didn't review them all, right?

3 A. Well, I think the way to put that
4 is that there are thousands of intercompany
5 balances. I certainly did not review
6 thousands of intercompany balances. But my
7 financial advisors who did review a lot of the
8 intercompany balances, and after presentations
9 to me, I came to the conclusion that they were
10 not necessarily enforceable debts in the
11 ordinary course.

12 Q. Okay. So when this chart was
13 filed listing Creditors Holding Unsecured
14 Claims to let people know who the creditor's
15 name was and the basis of the claim, whoever
16 prepared the chart wrote intercompany payable
17 in your view they were just wrong?

18 MR. KERR: Objection.

19 A. As I said, I'm not sure what these
20 were. As I looked at them from the
21 perspective of the settlement of the
22 intercompany claims, I thought about them as
23 being, as I said, no more than intercompany
24 balances. I'm sure the form is correctly
25 filled out. But I think that these are

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2 intercompany balances and that they were
3 certainly appropriate for me to not take into
4 consideration in the global settlement.

5 Q. Would you look at the page prior
6 to that. Page 3 of 13. And do you understand
7 the purpose of the schedule was to state the
8 name, mailing address, including zip code and
9 the last four digits of any account number of
10 all entities holding unsecured claims without
11 priority against the debtor or the property of
12 the debtor as the date of the filing of this
13 petition?

14 A. Yes, I do.

15 Q. And so you understand that on the
16 next page that information is intended to
17 fulfill that requirement?

18 A. Yes.

19 Q. Do you have any reason to believe
20 that the company was not attempting to be
21 accurate and honest in completing this
22 schedule?

23 A. None whatever.

24 Q. But you have a different view as
25 you sit here today as to what that means.

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2 MR. KERR: Objection.

3 A. I have a view that for purposes of
4 the global settlement, I look at it from that
5 perspective, intercompany claims were not
6 anything more than intercompany balances
7 reflected on the general journal of the
8 company and that for my purposes seeking to
9 compromise all of the claims of the estate of
10 the various creditors, and based on my view
11 that the intercompany balances were general
12 intangibles in which the JSNs did not have a
13 security interest, my view was was that it was
14 appropriate for me to treat them as being not
15 worthy of consideration for global settlement
16 purposes.

17 Q. Okay. Now, if I were to show you
18 a series of other schedules of assets and
19 liabilities that had the same treatment would
20 your view be the same? We could walk through
21 them but they're generally same.

22 A. I would have the same position I
23 assume without having seen them.

24 Q. Okay. Have you come to the view
25 that the intercompany claims have no value?

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2 A. No. I don't think I've ever said
3 that.

4 Q. Do you have a view as to whether
5 there is value there?

6 A. I have no idea whether there is
7 any value there or not.

8 Q. Have you done anything to test at
9 any level whether there is value there?

10 MR. KERR: Objection to form.

11 THE WITNESS: I'm sorry?

12 MR. KERR: You can answer. I just
13 objected.

14 A. Do you want to restate the
15 question? I'm sorry.

16 Q. Sure. Have you done -- I'll give
17 you a different question.

18 Have you done any analysis at all,
19 without determining what the value was, as to
20 whether there is value there?

21 A. As I said, I've had many, many
22 meetings with my financial advisors, with my
23 counsel, with other counsel, with other people
24 with respect to the intercompany balances, and
25 it was -- it's been my conclusion that they

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2 are not something that I needed to take into
3 consideration in terms of the global
4 settlement. I did not think that they had
5 enforceable collectible value.

6 Q. But you have not attempted to
7 analyze any orders of magnitude as to what
8 value may be there.

9 A. I have not.

10 Q. And just to be clear, you have not
11 concluded that there is no value there?

12 A. That's correct.

13 Q. Is it your view that the
14 intercompany claims are worthless and
15 meritless?

16 A. My view that for purposes of the
17 global settlement I could treat them in that
18 fashion. I assume the view ultimately of the
19 judge would be the view that matters.

20 Q. I understand that for purposes of
21 the settlement you would like to treat them in
22 that manner. My question is have you come to
23 the conclusion that the intercompany claims
24 are worthless and valueless?

25 A. Well, I recognize that they are of

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2 little -- in my own mind, of little or no
3 value because of the prospect of forgiveness
4 of indebtedness by -- both by AFI and a
5 history of forgiveness of these balances over
6 the course of time, I'm not sure that they
7 have any value.

8 Q. But you're not sure that they
9 don't.

10 A. Correct.

11 Q. When you were discharging your
12 duties as CRO within the scope of your
13 engagement, did you allocate any of the Ally
14 contribution to the waiver of the intercompany
15 claims?

16 A. No, I did not.

17 Q. Why not?

18 A. Well, to restate my prior view of
19 the intercompany claims, I perceived them to
20 be of -- not consequential. I thought that
21 they were not effective, not collectible in
22 the main, that they would have to be examined
23 individually and there are thousands and
24 thousands of them to determine if they had any
25 meaning behind them. To do that would have

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2 defeated the purpose of the global settlement.

3 I simply was not going to do that. It just
4 made no sense to me.

5 Q. How would that defeat the purpose
6 of the global settlement?

7 A. Because the global settlement
8 represents a compromise among many, many
9 participants as to their individual claims and
10 represents a compromise of the claims against
11 Ally held by both individuals as well as by
12 the estates. And anything that delayed the
13 process I thought would also give rise to the
14 need to -- in the case of the intercompany
15 balances, to review each of the intercompany
16 balances, determine its origination, determine
17 what the offsets were to it, reallocate the
18 \$16 billion of forgiveness. That would delay
19 and defeat the process.

20 And it would certainly not
21 encourage an Ally contribution or anybody else
22 to go forward with their compromises.

23 So for my purposes in looking at
24 the global settlement, I thought it was
25 reasonable and responsible to treat them as

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2 not participants.

3 Q. When was that decision made as a
4 way of disregarding the intercompany claims?

5 MR. KERR: Objection.

6 A. I don't know if there's any
7 specific date that I made that decision, but
8 there's a decision that arose out of the
9 various conversations I had over time since
10 I've been involved in this case up to the time
11 the client support agreement and support
12 agreement.

13 Q. So it was a decision that was made
14 over time.

15 A. Yes.

16 Q. I used the phrase RMBS
17 settlement. What does that mean to you?

18 A. The settlement for the RMBS claims
19 in this estate is assume is what we're
20 referring to.

21 Q. Okay. And you talked about that
22 you were going to testify and have been
23 designated by the company as the 30(b)(6) on
24 that topic?

25 A. Yes.

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2 Q. Can you explain the RMBS suits
3 generally. What are they about?

4 A. Reps and breaches of warranty,
5 primarily. Maybe other causes of action, as
6 well, but primarily that as I understood.

7 Q. Reps and breaches of warranties
8 with respect to what?

9 A. With the mortgages that were being
10 insured by the various -- I'm sorry. By the
11 RMBS creditors. Pardon me. RMBS creditors
12 are people who purchased their --
13 institutional investors who purchased their
14 securities from securitization trust. They
15 would have claims for breaches of reps and
16 warranties which encourage them to bring
17 causes of action against both ResCap and Ally.

18 Q. And in what form were those claims
19 settled?

20 A. They were settled as part of the
21 global settlement.

22 Q. So they were part of the
23 mediation.

24 A. They were part of the mediation
25 effort.

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2 Q. On behalf of ResCap who negotiated
3 that settlement?

4 A. Combination of myself, my counsel,
5 my advisors, the Judge Peck as mediator, the
6 Creditors Committee, their advisors and all of
7 the competing parties. And including the RMBS
8 representatives.

9 Q. Did the Debtors retain a third
10 party to -- an expert, to assess the value of
11 the claims that the RMBS claimants were making
12 against the Debtors?

13 MR. KERR: Objection. Just so
14 we're clear, you're talking about prior
15 to reaching the global settlement?

16 MR. COHEN: Yeah.

17 MR. KERR: Okay.

18 MR. COHEN: Well, let me be
19 clearer on what I'm being clear on.

20 Q. I'm not asking how you came to a
21 number in the mediation. I'm asking whether
22 you retained an expert just to value the
23 claims.

24 MR. KERR: But I just want it
25 clear that you're talking about prior to

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2 reaching the global settlement.

3 MR. COHEN: Correct.

4 A. Sitting here today, I'm not sure
5 but I know we retained Mr. Lipps who is
6 assisting us in that litigation and in the
7 valuation of the RMBS claims.

8 Q. Why did you retain someone to
9 assist you in evaluating the RMBS claims?

10 MR. KERR: Objection.

11 A. Because I think this was in place
12 before I arrived, quite frankly. And I assume
13 that it was important to continue on with that
14 document.

15 Maybe you should reask your
16 question.

17 Q. Sure. Why did ResCap retain
18 someone to assist it in evaluating the RMBS
19 claims?

20 A. I assume that -- I don't assume.
21 I don't know the answer to that.

22 Q. Did you ask anybody?

23 A. No.

24 Q. Did you think it was important for
25 ResCap to have an understanding of the

1 L. KRUGER

2 magnitude of those potential claims against
3 it?

4 A. I thought it was important for me
5 to have an understanding of the potential
6 claims that might be asserted by the RMBS
7 creditors.

8 Q. Why would that be important for
9 you to know?

10 A. Because if I was going to achieve
11 a global settlement and seek to compromise
12 everybody's claims I needed to understand the
13 nature of their claim, its strengths and its
14 weaknesses.

15 Q. But on the flip side of that, you
16 never retained anybody to advise you as to the
17 value of your claims against Ally. Why not?

18 MR. KERR: Objection. Misstates
19 his -- objection.

20 A. I don't need anybody to help me
21 evaluate the claims against Ally because I
22 don't know that that's really relevant. I
23 think what is relevant is trying to get a
24 maximum contribution from Ally such that it's
25 sufficient together with the assets of the

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2 estates to provide enough funds to achieve a
3 global settlement and the compromise among the
4 various competing interests.

5 Q. How do you determine what is a
6 fair contribution without any analysis of the
7 value of the potential claims?

8 MR. KERR: Objection.

9 A. In my mind, for settlement
10 purposes I'm looking at the global settlement
11 and the compromises that were necessary among
12 all of the competing parties. If there was a
13 combination of funds that were sufficient to
14 achieve that result, in my mind that was an
15 acceptable result and a responsible result.

16 And so when Ally's contribution
17 got to the \$2.1 billion and creditors were
18 able to coalesce around it and say this is
19 sufficient funds together with the funds
20 available from the Debtors' estate to meet our
21 hopes and expectations and desires in the
22 main, I thought that was a sufficient level of
23 contribution. So there was no need for me to
24 try to evaluate the individual claims. I
25 never did.

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2 Q. Do you know what the FGIC
3 settlement involves?

4 A. Yes.

5 Q. Could you describe that.

6 A. We settled -- I'll try to do this
7 from memory. FGIC filed I think a billion 850
8 million dollar claims against ResCap, RFC,
9 GMACM. In addition to which they were
10 asserting claims, aiding and abetting claims,
11 against ResCap and Ally. We settled those
12 claims for a claim of \$596 million. FGIC was
13 going to pay 253 million is my rec -- 273
14 million is my recollection. 253 million to
15 trusts and release for the trusts' claims
16 against them. And at the same time was going
17 to be receiving \$596 million by way of claims
18 in each of the estates. It looked to me like
19 an appropriate settlement at the time.

20 Q. How was -- through what process
21 was that settlement achieved?

22 A. Negotiations with FGIC.

23 Q. Was that part of the global
24 settlement?

25 A. It was part of the global

1 L. KRUGER

2 settlement.

3 Q. Okay. Why did the amount of the
4 allowed claim differ depending on confirmation
5 of the plan?

6 A. Because if the plan was to be
7 confirmed, then we wanted to provide a
8 mechanism for FGIC to receive the funds that
9 we thought were the -- so to speak, the
10 compromised amount reached in the
11 negotiations.

12 Q. So it was just a byproduct of
13 negotiation?

14 A. A combination of a byproduct of
15 negotiation and a recognition of what was
16 required as part of the overall global
17 settlement to have FGIC participate at a level
18 that was acceptable both to myself as a CRO as
19 well as to the other creditors.

20 Q. Did the Debtors conduct any
21 analysis as to its potential exposure to FGIC?

22 A. Yes.

23 Q. Why?

24 A. We conducted an -- we -- over the
25 course of the months that I've been involved

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2 before the final resolution of the plan
3 support agreement, I had many, many
4 conversations with my own counsel, with other
5 counsel, with advisors, financial advisors,
6 and looked at each of the individual
7 creditors' claims so that I would better
8 understand what we thought the debtor, I and
9 myself, their strengths and weaknesses were of
10 those individual claims, not to put
11 necessarily dollar values on them, but to
12 understand where they might stand in the
13 panoply of what was possible.

14 I also heard from each the various
15 competing creditors as to what they thought
16 the strengths and weaknesses were of their own
17 claims. More emphasis on the strengths, not
18 the weaknesses. And they were quick to point
19 out to me the weaknesses of other people's
20 claims.

21 That was all part the negotiation
22 process. That was all part of the mediation.

23 Q. Are you familiar with the MBIA
24 settlement?

25 A. Yes, I am.

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2 Q. What is the MBIA settlement?

3 A. It's a settlement with allowed
4 claims at the three silos that we've created
5 for plan purposes, ResCap -- ResCap, GMACM and
6 RFC.

7 Q. What are the MBIA claims?

8 A. Their claims are insurance claims
9 where they insured some of the securitization
10 trusts. My recollection is that their
11 claims -- something in the neighborhood of 2
12 plus billion dollars.

13 Q. In what form were those claims
14 resolved?

15 A. They asserted proofs of -- they
16 say they filed proofs of claims against the
17 various debtors. They were resolved through
18 negotiation.

19 Q. And was the negotiation part of
20 the mediation?

21 A. Yes, it was.

22 Q. Okay. Was the subordination of
23 the allowed claims in the RMBS, FGIC and MBIA
24 settlement ever discussed by the Debtors?

25 A. Yes.

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2 Q. Was subordination of the allowed
3 claims raised during the negotiations? Was
4 that a negotiated point?

5 A. Well, I guess I can violate --
6 MR. KERR: Why don't you just
7 answer that yes or no.

8 A. Yes.

9 Q. Why are the Debtors seeking to
10 subordinate the FHFA claims but not the
11 others?

12 MR. KERR: Objection.

13 A. I'm sorry. Do you want to give me
14 that one again?

15 Q. Sure. Why are the Debtors seeking
16 to subordinate the FHFA claims but not the
17 others?

18 A. Because we believe that in the
19 negotiation with the FHFA that was an
20 appropriate thing to be doing.

21 Q. Why did you think that was an
22 appropriate thing to be doing?

23 A. I might add parenthetically that
24 claim has been settled and they are now
25 supporting the plan.

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2 But at the time it seemed to us to
3 be a way to try to deal with them and help in
4 the negotiations.

5 Q. Could you describe the private
6 securities claimants' settlement?

7 A. Yes. They are receiving, in the
8 form of units in the liquidation trust,
9 ostensibly \$235 million which will represent
10 what they, 21 creditors in that category, are
11 going to allocate among themselves in
12 satisfaction of their claims.

13 Q. And in what forum were those
14 claims --

15 A. Also as part of the mediation
16 process.

17 Q. Did the Debtors make any attempt
18 to value its potential exposure to the private
19 securities claimants?

20 A. Well, as I said, we didn't look at
21 in terms of necessarily dollar amounts
22 although we knew what people were claiming.
23 We looked at it in terms of trying to
24 determine the strengths and weaknesses of
25 their claims so we could understand better how

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2 to compromise those claims and how to
3 participate in a compromise process. Which
4 was the mediation process.

5 Q. So with respect to all of the
6 analysis with these various claims we've been
7 discussing, you did a merits analysis on those
8 claims, right?

9 A. We certainly looked at the merits
10 of those claims and the weaknesses of those
11 claims.

12 Q. Who were the people who were
13 participating in the mediation?

14 A. Oh, God. That is a challenge
15 because at the mediation sessions there were
16 often more than a hundred people present.

17 Q. Okay. How about entities instead
18 of people?

19 A. The members of the Creditors
20 Committee certainly. Some of the consenting
21 claimants were also present during those
22 mediation sessions. Counsel for the various
23 parties. Financial advisors for the various
24 parties. My own counsel. My own financial
25 advisors. And Judge Peck.

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2 Q. When you say consenting claimants,
3 can you identify who those are?

4 A. Like the New Jersey Carpenters,
5 for example, who are not members of the
6 Creditors Committee but who were present from
7 time to time during the mediation sessions.

8 Q. Okay. Any others come to mind?

9 A. Not sitting here today, no.

10 Q. Was Paulsen part of the mediation?

11 A. I don't recall now whether they
12 participated. I think they did participate
13 but I would not swear to that.

14 Q. And do you recall what their
15 holdings in unsecured bonds were as part of
16 the mediation?

17 A. No, I don't.

18 Q. Let's go to topic 20 which is
19 partial consolidation.

20 A. Um-hum.

21 Q. In your 40 years of practice
22 you've dealt with the issue of substantive
23 consolidation before I assume.

24 A. Yes.

25 Q. And you're familiar with the

1 L. KRUGER

2 Second Circuit test for substantive
3 consolidation?

4 A. I don't know if I'm familiar with
5 it but I have some general sense of what's
6 required for substantive consolidation.

7 Q. And what is your general sense of
8 what's required for substantive consolidation?

9 A. Well, you need to be able to
10 demonstrate that the creditors were confused
11 about whom they were dealing with, that there
12 are not books and records, that the companies
13 were sort of closely intermingled. Things of
14 that sort.

15 Q. So if I were to say creditor
16 reliance on a single entity and hopeless
17 entanglement?

18 A. That's certainly some of the
19 standard things that one would look at.

20 Q. Okay. Are there other factors
21 that you would look at?

22 A. Sitting here, I don't know. I'd
23 have to go back and read the Second Circuit
24 decision.

25 Q. Okay. In your 40 years of

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2 experience, and your experience more
3 specifically with substantive consolidation,
4 is it your view that that's an extraordinary
5 remedy?

6 A. It's a remedy. It's not very
7 frequently found. I'm not sure what
8 extraordinary means. But it's not frequent.

9 Q. Do you have a view as to why it's
10 not frequent?

11 A. Difficult to prove. Expensive to
12 prove. Sometimes not in the interest of
13 creditors to do that.

14 Q. When you say difficult to prove,
15 what do you mean?

16 A. Well, it's another form of
17 litigation used to demonstrate all the things
18 you just mentioned as for why there should be
19 substantive consolidation. I assume that
20 there would be creditors whose views differ
21 from that and then you're off to the races in
22 litigation.

23 Q. So you'd share my view, though,
24 that substantive consolidation is not the
25 norm, it's a remedy that you have to prove

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2 entitlement to, right?

3 MR. KERR: Objection.

4 A. Well, I would certainly suggest
5 that substantive consolidation is not the
6 norm. I would agree with that.

7 Q. All right. And there are legal
8 tests that you're required to meet in order
9 for the court to impose substantive
10 consolidation, correct?

11 A. Yes.

12 Q. And the same is true with respect
13 to partial substantive consolidation; isn't
14 that also true?

15 MR. KERR: Objection.

16 A. It depends on what the purpose is.
17 Partial substantive consolidation of the
18 client that we're talking about in the ResCap
19 setting is not substantive consolidation for
20 all purposes. And I think your prior
21 conversation and your prior questions really
22 related to substantive consolidation for all
23 purposes.

24 The substantive consolidation in
25 the ResCap Chapter 11 proceeding, where you

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2 create the three silos, was really for
3 efficiency and distribution and it wasn't to
4 suggest that all of the entities, assets and
5 liabilities are now being co-mingled into one
6 entity. That's not what this is about.

7 Q. To your knowledge, has ResCap or
8 any of its advisors undertaken an
9 investigation as to whether creditors were
10 confused as to which ResCap entity they were
11 dealing with?

12 A. I've certainly had those -- I had
13 conversations certainly with my counsel, with
14 the financial advisors, and with others about
15 the substantive consolidation. But I have
16 personally spoken with the various creditors
17 who are on the Creditors Committee and others
18 outside the Creditors Committee. No one has
19 ever suggested to me that they were confused
20 about who they were dealing with. So I didn't
21 see real basis for substantive consolidation.

22 Q. Okay. How about with the hopeless
23 entanglement, that the books and records just
24 couldn't be unscrambled did you seek --

25 A. I don't.

1 L. KRUGER

2 Q. Let me finish.

3 A. Sorry.

4 Q. On hopeless entanglement, the
5 books and records couldn't be unscrambled, did
6 you see any evidence that that was the case in
7 ResCap?

8 A. No, I did not.

9 MR. COHEN: Let me take about five
10 minutes. I think we may be done.

11 MR. KERR: Okay. Sure, sure,
12 sure.

13 THE VIDEOGRAPHER: The time is
14 1:28 p.m. We're going off the record.
15 (Recess taken.)

16 THE VIDEOGRAPHER: The time is
17 1:36 p.m. We're on the record.

18 BY MR. COHEN:

19 Q. Mr. Kruger, did the Debtors
20 consider auctioning the intercompany claims?

21 A. Auctioning the intercompany
22 claims?

23 Q. Yeah.

24 A. No. We did not.

25 Q. Why not?

1 L. KRUGER

2 A. It would seem to me that's another
3 part of the process that would delay the
4 confirmation and would delay the global
5 settlement being implemented.

6 Q. But wouldn't it have given you a
7 good indication to see if the market put a
8 value on those claims?

9 A. I'm not sure to what purpose. I
10 think that you're still entitled -- the JSNs
11 are entitled to make an argument that they
12 think that there's value there. So I'm not
13 sure how the auction would have made any
14 difference.

15 And, as I said, for my purposes,
16 for the global settlement purposes, I think it
17 was reasonable and responsible and appropriate
18 to treat these as intercompany balances as I
19 think of them as being without value or of
20 little value.

21 Q. So once that decision was made in
22 the context of the global settlement
23 negotiations, other alternative treatments of
24 the intercompany claims were off the table; is
25 that fair?

1 L. KRUGER

2 A. Well, we certainly -- I certainly
3 didn't think about auctioning them off at that
4 time and I do not think that would have been a
5 sensible thing to do.

6 Q. Why not?

7 A. Because I think, as I said, that,
8 you know, we then get into the process -- I
9 assume in order to auction them off I have to
10 be able to demonstrate that they have
11 something that is worth auctioning off. And
12 then I get back to where I started from, which
13 is that I'm then in the process of trying to
14 understand and analyze each of the
15 intercompany claims to find out whether or not
16 they have value and if there's something
17 there.

18 None of that made sense to me in
19 the context of the global settlement. So for
20 global settlement purposes, I thought it was
21 appropriate to just treat them as zero because
22 I had a consenting group of creditors that was
23 quite large with a contribution that was
24 sensible. And I was at the same time
25 paying -- you know, I come back to it. I

1 L. KRUGER

2 always thought that the JSNs were being well
3 treated when they got paid their allowed
4 claims plus pre-petition interest. So I
5 didn't think that there was any reason to
6 think about an auction of the intercompany
7 claims.

8 MR. COHEN: All right. Thank you.

9 I have no further questions.

10 MR. KERR: Anyone else?

11 (No response.)

12 (Continue on next page to include
13 jurat.)

1 L. KRUGER

2 MR. KERR: I think we're done.

3 Thank you.

4 THE WITNESS: Thank you.

5 THE VIDEOGRAPHER: The time is
6 1:39. We're off the record.

7 (Time Noted: 1:39 p.m.)
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19 _____
20 LEWIS KRUGER

21
22 Subscribed and sworn to before me
23 this ____ day of _____, 2013.
24
25 _____

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, FRANCIS X. FREDERICK, a
Notary Public within and for the State
of New York, do hereby certify:

That LEWIS KRUGER, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of
the testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that
I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 30th day of
October, 2013.

FRANCIS X. FREDERICK

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----- I N D E X -----

| WITNESS | EXAMINATION BY | PAGE |
|--------------|----------------|------|
| LEWIS KRUGER | MR. COHEN | 9 |

----- INFORMATION REQUESTS -----

DIRECTIONS: NONE
RULINGS: NONE
TO BE FURNISHED: NONE
REQUESTS: NONE
MOTIONS: NONE

----- EXHIBITS -----

KRUGER FOR ID.

Exhibit 1

Notice of Debtors' Motion

Pursuant to Sections 105(a) and

363(b) of the Bankruptcy Code

for an Order Authorizing the

Debtors to Appoint Lewis Kruger

as Chief Restructuring Officer..... 18

Exhibit 2

Notice of Debtors' Motion Pursuant

to Sections 105(a) and 363(b) of

the Bankruptcy Code for an Order

Approving Amendment to Engagement

Letter with Debtors' Chief

Restructuring Officer, Lewis Kruger

as Chief Restructuring Officer..... 47

Exhibit 3

e-mail dated Monday, 9/17/2012

with attachment bearing production

numbers UCC12846 through UCC12852..... 68

----- EXHIBITS -----

KRUGER FOR ID.

Exhibit 4

Notice of Filing of Revised

Disclosure Statement for Debtors'

Revised Plan of Reorganization

Pursuant to Chapter 11 of the

Bankruptcy Code..... 100

Exhibit 5

Report of Arthur J. Gonzalez,

As Examiner..... 115

1
2 NAME OF CASE: In Re Residential Capital LLC

3 DATE OF DEPOSITION: OCTOBER 30, 2013

4 NAME OF WITNESS: LEWIS KRUGER

5 Reason codes:

1. To clarify the record.

6 2. To conform to the facts.

3. To correct transcription errors.

7 Page _____ Line _____ Reason _____
From _____ to _____

8
9 Page _____ Line _____ Reason _____
From _____ to _____

10 Page _____ Line _____ Reason _____
From _____ to _____

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12 Page _____ Line _____ Reason _____
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24 _____
25 LEWIS KRUGER

Deposition Errata Sheet

In re Residential Capital, LLC, et al.,
Case No. 12-12020(MG)

Deponent: Lewis Kruger
Deposition Date: October 30, 2013

| Citation | Testimony |
|----------|--|
| 16:12 | I agreed <u>d</u> to |
| 16:14 | you we met |
| 20:16 | By <u>Y</u> es. |
| 38:12 | they were not Ally really liens |
| 38:19 | value <u>valid</u> claim |
| 39:5 | liens attached to in the lower <u>flow of</u> funds from Ally |
| 41:25 | was <u>were</u> |
| 45:23 | The question was <u>would</u> what they were prepared |
| 48:15 | Cathy <u>Kathy</u> Patrick? |
| 49:20 | services there <u>are</u> changes from the original |
| 51:3 | border <u>broader</u> plan issues. |
| 54:6 | contribution <u>could</u> have been negotiated? |
| 58:7 | with <u>was</u> |
| 69:19 | the Debtor's intercompany <u>claims</u> to determine |
| 77:3 | <u>did not</u> uniformly |
| 81:16 | as being bad <u>not a</u> debt |
| 95:25 | allocated on a <u>in</u> |
| 97:18 | sellable <u>sensible</u> |
| 112:18 | settlement what <u>that</u> each |
| 118:18 | site <u>sight</u> |

| Citation | Testimony |
|----------|---|
| 119:15 | lives and in being |
| 119:18 | possible claims against Ally |
| 130:23 | None whatso ev ever |
| 134:4 | both by AFI and ResCap and a |
| 153:3 | efficiency and in distribution |

Date: 11/15/13

Signed: 
Lewis Kruger